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ABSTRACT

The purpose of this document is to help South African educational institutions adjust to a post-apartheid era, in which linguistic diversity is promoted and celebrated, by clarifying the emerging processes of language policy formulation and implementation. The new government decided against issuing a grand blueprint for a new national language policy. Instead, it decided to encourage a democratic and participatory process to explore the issue. Papers in the book are as follows. Section 1, "General Introduction," includes: "Process and Participation, Not Blueprints" (David Brown). Section 2, "The Legal Framework-the Constitution and Language in Education," includes: "The Constitution and the Bill of Rights: Their Implications for Language Education" (Matthew Chaskalson); and "The Legal Role of the Provinces in Language Policy and Education" (Brendan Barry). Section 3, "The Nature of Language Policy and Process: the Pan South African Language Board and the National Department of Education," includes: "Functions of the Pan South African Language Board" (Khethiwe Marais); and "Language Education Policy and the National Education Department" (Neville Alexander). Section 4, "Language Policy and Practice at School Level," includes: "The ELTIC [English Language Teaching Information Centre] Project" (Dodds Pule); "Researching the Language Context for Language Policy Decisions at School Level" (Sarah Slabbert); "Language Education and the Policy Process in KwaZulu-Natal" (Mervyn Ogle); and "Language as a Subject" (David Gough). Section 5, "Language Policy and the Publishing Industry," includes: "What Will Books Look Like? How Will We Teach? A Practical Look at Language Policies" (Kate McCallum). Two appendices are included: "Extracts from the South African Constitution" and "Extracts of Language Clauses in Provincial Education Legislation." (KFT)

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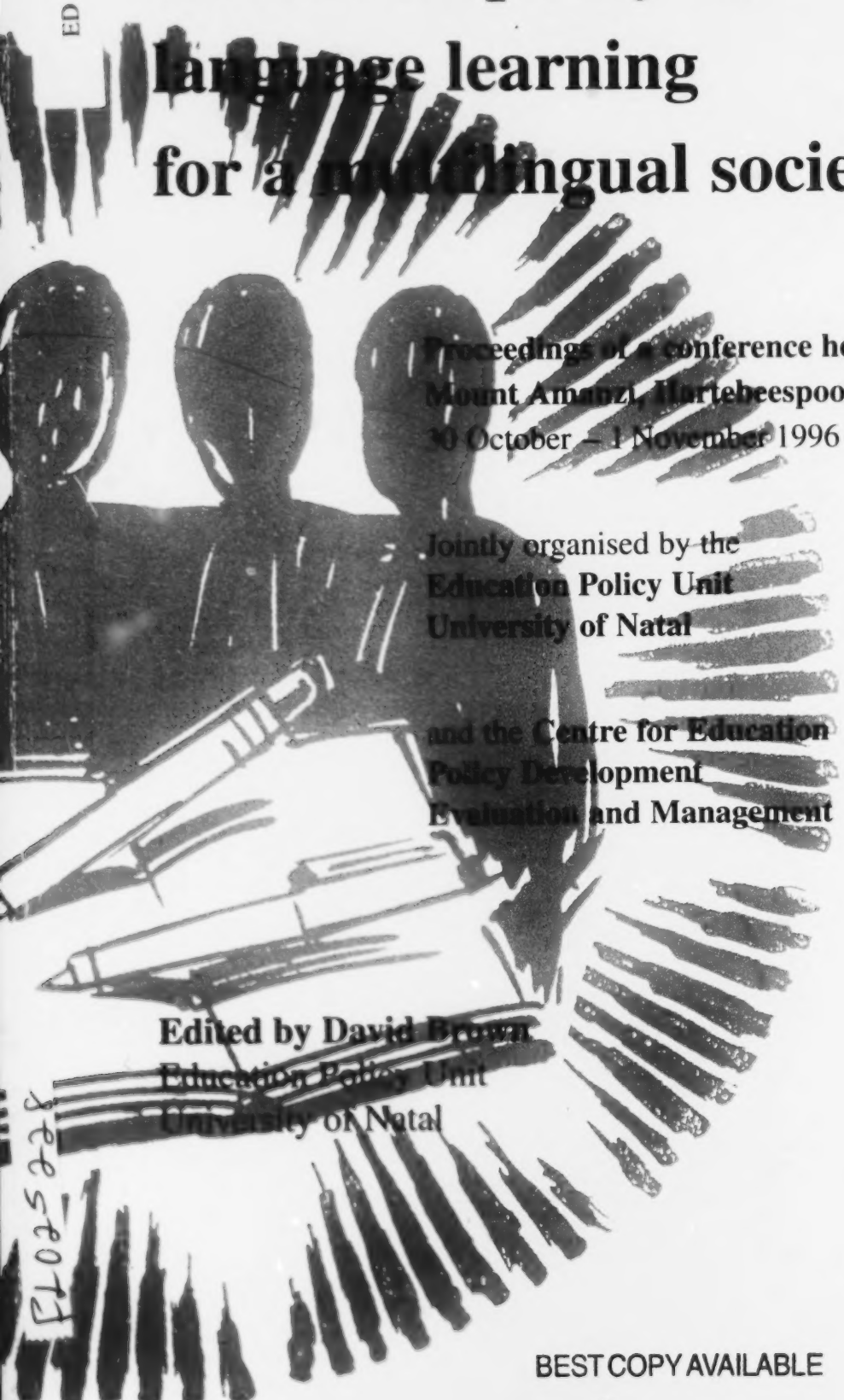
Education policy and language learning for a multilingual society



Proceedings of a conference held at
Mount Amanzi, Hartebeespoort, Gauteng
30 October – 1 November 1996

Jointly organised by the
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EDUCATION POLICY AND LANGUAGE LEARNING FOR A MULTILINGUAL SOCIETY

Proceedings of a conference held at Mount Amanzi, Hartebeespoort 30 October to 1 November 1996

Edited by David Brown
Education Policy Unit
University Of Natal

Education Policy Unit

The Education Policy Unit (EPU) at the University of Natal, Durban, is one of the EPUs established in 1987 as an initiative of the National Education Co-ordinating Committee (NECC). Its objectives are to:

- provide policy support, research and analysis to national and provincial government
- act as a rapid response mechanism for decision and policy makers in education
- produce high quality, high impact research
- ensure research training, especially of black female researchers
- provide a resource and dissemination function

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Preface

South Africa now has a Constitution which not only guarantees, but also promotes and celebrates, our linguistic diversity - a far cry from the stifling approach of the apartheid years. In terms of this new framework, virtually every educational institution in the country is engaged in rethinking policy on all aspects of learning. It seemed, therefore, an opportune time to consider in depth the limitations of and possibilities for language learning in South African schools, a key feature of educational policy transformation.

Accordingly, the Education Policy Unit (EPU) at the University of Natal initially decided on a colloquium of 20 to 30 participants to clarify the emerging processes of language policy formulation and implementation at school level. Not unexpectedly, the idea grew rapidly and by August 1996, the EPU, together with the Centre for Education Policy Development, Evaluation and Management (CEPD) in Johannesburg, decided to arrange a larger conference, to be held in Hartebeespoort, North Western Province. Organised at short notice, the conference took place the day after the final amendments to the Schools Bill (fittingly and significantly relating to the language clauses) were passed.

Some 90 delegates spent two days listening to presentations from a range of researchers in close touch with various aspects of policy transformation. Participants were drawn from teacher, student and cultural organisations, the legal profession, tertiary institutions, national and provincial education departments and publishers. There was lively discussion in each session, and group discussion took place around key questions in language learning and language policy. The crucial points of consensus and debate have been distilled and included in the general introduction.

Contributors were invited at very short notice to make presentations to the conference, and in addition had a rapidly changing legal and political context to assimilate, which they did adroitly and willingly, with a definite sense of the importance of this issue for South African education and its transformation. In the light of these considerations, it was decided to record and transcribe the proceedings, rather than to call for papers. Thus, all the contributions which appear in this report were compiled from these transcriptions. It was decided to include all those papers dealing directly with policy and process, given that this was the central theme of the conference. As a result, papers dealing with methodology, although very incisive, have regrettably been omitted.

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- The following staff members of the CEPD in Johannesburg: Mareka Monyokolo, who did most of the organising and made the conference possible with an inimical willingness to see things change; Carol Clarke for organising resource materials; Jordan Naidoo for sharing ideas at the inception; and John Pampallis and Liz Ebersohn for combining the CEPD and EPU (Natal) initiatives
- The staff of the EPU at the University of Natal, who supported this initiative from inception to conclusion
- The contributors to the conference, who presented papers at very short notice
- Marlene Naidoo, who painstakingly undertook the transcription of all the conference proceedings over Christmas and New Year
- Heather Hughes for editing assistance
- The Swedish International Development Authority (SIDA) for providing substantial funding towards both the conference and this publication

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Section 1: General introduction

Process and participation, not blueprints

David Brown

'We do not have a language policy for education.'
Thami Mseleku, Educational Adviser to the Minister of Education, in his keynote address to conference

It is not often that ministerial advisers issue such frank statements when they are supposed to be offering a vision for the future in a keynote address: in this case, to the Conference on Educational Policy and Language Learning for a Multilingual Society. Those who came to the conference might have expected Thami Mseleku to present a map of the future language policy; instead, they heard a detailed account of the tense negotiations over the final stages of the Constitution, held up specifically by the language clause and the question of the single medium school, and how the country was only a phone call away on a decision about a national referendum on the language question. He followed with an account of the rough passage of the Schools Bill through parliament - again, the final amendments to the decision-making processes on language policy were, as with the Constitution, the key to its acceptance.

The inclusion of single medium schools as an option in the Constitution has been seen by some to contradict the very essence of ten years of debate on the nature and recognition of South Africa as a multilingual society. The change seemed to have imported a form of *de facto* exclusion from schools on the grounds of language, despite contrary clauses in the Constitution.

However, Mseleku emphasised that we had now entered a 'new order' which was about the democratisation of policy process, and those who sought national blueprints were not going to find them. The new order and the skeleton of principles that existed, pointed instead to the creation of a *process of participation*, by which policies would be created in relation to speech communities and individuals' desires. People needed the democratic and political will to achieve those desires. He was of the view that the old and the new would be vying with one another in a contest for social change for some time to come.

There is a steady stream of legislation, both national and provincial, which will interrelate with the Constitution. In addition, there are a variety of new constitutionally created advisory bodies such as the Pan South African Language Board, the Provincial Language Committees, the Minorities Commission and, not least, the governing body at school level, which will play a significant role in language policy. All will potentially have an impact on language learning.

Yet recognition of multilingualism in our society has a variety of possible outcomes in educational contexts, as witnessed in the responses to date at school and community level, from dramatic resistance to creativity and innovation. The conference heard input on a number of areas of language policy. It was privileged with perspectives from across a wide range of opinion, by virtue of participation from different regions with different linguistic contexts. The following broad areas formed the basis for discussion: the legal framework, national policy formulation, decision on policy at school level and implications for the publishing industry.

1. The legal framework of language policy in education

The first two papers on the legal framework, given by Matthew Chaskalson and Brendan Barry, were requested because of the experience that these two lawyers have had with legal provisions for language and education in Gauteng and at national level. Chaskalson's paper offers a wealth of perspectives on the importance and significance of different forms of right, what the Constitution says and perhaps more importantly, what it does not say, about official languages. Barry discusses in detail the procedures enshrined in the Schools Act, which sets out the circuitous process of decision-making between the Minister of Education at national level, the provincial Members of the Executive Committee (MECs), and the school governing bodies. In addition, the status and variety of language legislation in the provinces is discussed.

Judging from Barry's analysis, language policy decision-making is likely to be different at provincial and national levels. The relationship between national and provincial legislatures on education is, according to the Constitution, one of dual power. While the Constitution provides a framework for policy formulation, there is considerable room for variety in policies and choices on language policy. The country is unlikely to display a uniform pattern of choice at school and provincial levels. Barry's paper provides the beginning of a comparative discussion of policy and legal instruments between the provinces.

In discussion on these papers, certain crucial questions arose, showing that many difficulties lie in the way of the emergence of language policy. One of these concerned the sensitive issue of indigenous languages/language varieties not included on the constitutional list of official languages, such as Northern Ndebele, a dialect not previously prepared for educational purposes. This 'language' or 'language variety' was approved for introduction in schools by a provincial education department, with the support of the only legally constituted provincial language committee in the country at the time, that of the Northern Province.

The question was posed, hypothetically, as to whether the previously marginalised 'indigenous' languages mentioned in the Constitution, would apply to this language, and as there was disagreement here with the national government, would there be recourse by the provincial government to the Constitutional Court for protection against a national government decision? This question is already waiting at the door of the national ministry for a decision. In fact, the question amounts to 'could a twelfth language be added to the list for educational purposes?' In answer, the opinion was expressed that the term 'indigenous' language could possibly be applied in this context, but it was of course not possible to predict the decision of the Constitutional Court.

Another crucial question that arose concerned the reality of demographic shifts, where learners and indeed speech communities move between provinces and educational systems, a common feature of South African life. To what extent would a learner be expected to adapt to each new provincial educational language policy she/he encountered? Here too, there are no clear answers. Barry identifies three provinces whose language in education sections may conflict with the national Schools Act.

2. The role of the Pan South African Language Board and the Department of National Education in the formulation of language policy

In order to clarify the process of policy formulation, the statutory advisory body, the Pan South African Language Board (PANSALB) and the Department of Education were requested to make inputs. That from the newly constituted language board consisted of a brief description of its functions; it had only met on two occasions at the time of the conference. This body is important, as it seems set to play a strong advisory role to the Ministry of Education as well as to other organs of government.

At national level, language policy at public schools awaits the final process of decision making, long delayed since the initial release date of June 16, 1996. At the time of writing, the interim document *Towards a language education policy for South Africa* still serves as the only official guideline to the departmental thinking. The Schools Act requires that the Minister formulate policy in consultation with the provincial MEC's, this process has yet to occur, and there are clear signs of areas of contestation.

After the final changes to the language clauses of the Schools Act and representations from Afrikaans language interests, the Minister directed the Director General to establish a task group to consider how to give effect to the provisions of Section 29(2) of the Constitution, which provides for rights with respect to the language of education, and the duty of the state in giving effect to such rights. The task group's report is to be considered at the next meeting of the Council of Education Ministers (CEM). There are other consultative processes being considered by the Minister before the implementation of this particular section is decided upon.

Once the formal decisions on language policy have been made, three policy documents will follow:

1. The Minister's norms and standards regarding language policy in terms of Section(6)1 of the South African Schools Act.

2. The Minister's language in education policy.

3. A guideline document, including explanations, recommendations, a glossary and proposals, on the appointment and functioning of provincial advisors on language policy in schools.

In sketching the background to the national Department of Education's language policy, Dr Neville Alexander's discussion reveals some of the history and current thinking about the formulation of national policy by the Department's language education committee. He gives perspectives on the timetable for change, and what he describes as 'open secrets' of evolving policy. He asserts that the timetable for change entails a projection into the next century. The policy of 'additive bilingualism' is in effect a statement of desire, to create conditions for the qualitatively better learning and teaching of a minimum of two languages in schools.

Several questions were addressed to the members of PANSALB concerning its scope and functions in relation to language development. Its promotion of language development is seen to be one of the most crucial areas in which it is to play a part. At this point only one of the provincial language committees has fully constituted itself. None of the old language boards have any official status with PANSALB, as they have ceased to be anything other than civil associations until such time as they seek and are granted status by this body.

A key and as yet unanswered question asked of PANSALB during the conference concerns the attitude it will have to languages which South Africa shares with four of its neighbours: Botswana, Lesotho, Swaziland and Mozambique. In all four cases, speech communities, Tswana, Sotho, Swati and Tsonga respectively, span international borders, in some cases with the majority of the speech community outside South Africa's borders. This has considerable implications for cooperation in areas such as language development and publishing. What are relatively small languages in the South African context grow in scope and social and communicative significance, if we consider these adjoining countries.

3. Language policy at school level

The third session of the conference focused on language policy at school level. It consisted of a panel of organisations and researchers who have worked in a variety of educational contexts. The English Language Teaching Information Centre (ELTIC) offered a report of its project, commissioned by the Gauteng Department of Education, to conduct the only investigation to date into possible decision-making processes of school governing bodies in varied speech communities. Two researchers, Dodds Pule and Sarah Slabbert, discussed the interim results of the project, which covered twelve schools in different sociolinguistic contexts in Gauteng. This was followed by input from Mervyn Ogle on the stasis in language policy at school level in KwaZulu-Natal, and David Gough's discussion of language as school subject.

The research from Gauteng was extensively debated and drew the most interest, as it focused on the complexity of decision-making at school level. A key issue was how such a project could develop into an informative and capacity-building exercise for new school governing bodies established under the Schools Act.

In South Africa, there are very many contexts in which it is an extremely challenging task to select languages of learning and languages as subject, and then to face the reality of which languages the institution has the capacity to offer, given its specific staffing constraints. Such decisions now have to be made against the backdrop of new

legislation and a complex process by which the language needs and aspirations of a specific community have to be met. As a result, very different decision-making processes and a greater degree of responsibility at school level are demanded, as opposed to the official bilingualism or trilingualism which was declared by administrative *fiat* under apartheid.

In his paper, David Gough discusses the long path that has to be taken in the development of indigenous languages. From his contact with Xhosa teaching in the Eastern Cape, he offers keen insights into the difficulties of moving away from linguistic purism (which still features strongly in teaching practice) and the ramifications this has for the language learner. He points to the enormous challenge of turning the previous multilingual policy, harnessed to the service of promoting ethnic identity, to one which fosters democracy and social tolerance of the 'other'. He identifies clearly that this is more than simply an advocacy of the development 'indigenous' languages, but involves their rejuvenation within the teaching profession as well.

4. Language policy and publishing

In any analysis of educational policy, educational publishing is critical, especially in the transformative conditions that prevail in South Africa. The directions that it takes are fundamental to the quality and nature of education delivered. The distorted character of South African educational publishing is strongly linked to the privileged vested interests of the past, often manifested in the form of grossly inferior educational materials for the majority. Language textbooks, as much as history texts, were often the cornerstone of apartheid educational endeavours.

How to provide language textbooks in line with a more democratic policy is a far more challenging matter. The conference heard discussion from Kate McCallum, chairperson of the Publishers Association of South Africa (PASA), whose specific knowledge of the language textbook market is wide-ranging and impressive. She describes the difficulties that she and other publishers have had in waiting for language policy to become clearer, which has placed them in a situation where they may have to produce texts in less time than they would normally need to enter the market. She faced challenging questions on the role of publishers in South Africa and confronted an advocacy for state publishing from some of the participants. Questions were raised about the commissioning of texts and development of publishing in South Africa. The quality of education received by South African school children in the future will, to a large extent, be dependent on the redevelopment of South Africa's educational publishing industry.

5. Discussions

During the conference, there were group discussions on a number of issues. These were:

- The role of the National Qualifications Framework (NQF) and the process of decision making on language policy. The determining effect of qualification on

language education if language competency is used as a criterion, as has historically been the case in South Africa, results in a form of social closure which limits access to the labour market and bureaucratic employment along ethnic lines. Discussion produced distinct suggestions that strong links between language and employment had to be underpinned by good justifications and periods of time to learn any specific language skills necessary to employment criteria, rather than being laid down as initial criteria of qualification. Previous conferences on the effects of the NQF on language policy have not adequately grappled with this danger of language as a form of social closure. It is obvious that decision-making in the next two years on language policy at school level, with participation by teachers, parents and students, will be affected by decisions on language qualifications taken by the NQF in all its spheres of redefining skills.

- The group discussion on language development suggested that there was a need to underpin and advance the development of African languages. The challenge was to achieve this on a new basis, so that the old forms of purism are set aside and that a new creative approach be developed in the interests of speech communities. Generally, it was felt this was fundamental, and that the necessary work should be sponsored in order to achieve parity in the development of languages. Many questions in this discussion were not answered; for example, does planned language development undermine innovative linguistic change in integrating communities? Can language development ever escape being an act of purism?

- Discussions on the role of governance at school level brought about a call for provincial departments to play a significant role in enabling the school governing bodies to participate in the process of decision-making. In some provinces, their roles appear to have been somewhat curtailed or modified by legislation, for example in KwaZulu-Natal. However, in the majority they are among the cornerstones of a democratic process of formulating language policy in education. It was felt that the need for information on the parameters of decision-making is important to avoid social conflict.

- The role of language in the curriculum was considered in discussion, and the old questions of language across the curriculum and the possibility for the use of more than one language of learning, were explored. However, the salient question of how much time should be allocated to language as a subject in the curriculum was not raised and has yet to be raised publicly. Will we enter the future where students spend upwards of 50% of their time in educational institutions learning three languages, or will that gross misapplication of educational time of the apartheid past, which affected generations of learners, be terminated?

Conclusion

Many developments in language education policy still stretch out before us: the finalising of the national education policy, decisions on norms and standards, the acceptance of recommendations of the task team on single-medium of education, the parallel development of policy in each of the provinces, and not least, the relationship between provincial and national legislation, which could at worst lead to constitutional

litigation, or at best to fruitful negotiation between provinces and national government. Constitutional litigation over what constitutes a language and what a dialect is could prove interesting, as linguists have never adequately dealt with the question! There is no blueprint, only a process. If people assert themselves, they are set to participate in choosing the languages they learn at school for the first time in South African history.

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Section 2: The legal framework: the Constitution and language in education

Introduction

The following two articles by Brendan Barry and Matthew Chaskalson, attorneys who have a long association with transforming education legislation, outline the key issues concerning the legal process of policy making on language in education in South Africa. They were written for the conference to provide guidelines and an understanding of the intricate legal scaffolding which supports the process of language policy making at national, provincial and school levels, a process which will continue with the implementation of the language provisions in the new Constitution; the new Schools Bill; and the relationship between national and provincial language policy making and legislation.[1] Both authors clearly outline the fact that it is a policy making process that is being defined, with limitations and possibilities dependent largely on the social context and participation in decision making processes at a number of different levels of governance. The aim is to provide democratic process and uphold human rights and, as a result, the much hoped-for delivery of a more effective educational context for language learning.

Matthew Chaskalson's contribution gives a detailed breakdown of the complex constitutional provisions concerning education and language, making a key distinction between the *absolute right* of education and *qualified rights* with respect to language and education. Brendan Barry concentrates on the language provisions in the Schools Bill and the relationship between the national government and the provinces on the question of language policy. In addition, he deals with the obvious and subtle distinctions evolving between the provinces' language policies.

[1] Shortly after this paper was written, the South African Schools Act was passed.

The Constitution and the Bill of Rights: their implications for language education

Matthew Chaskalson

1. The Constitution : educational rights and language rights

At the outset it is necessary to ask what a constitution does legally, as there are some quite important misconceptions in that respect and one should have clarity on the legal function of the constitution of a country. Broadly, one can distinguish between two different types of provisions found in a constitution.

First of all, there are general constituent provisions, which define how organs of state are constituted and what powers they will have.[2] For our purposes, the relevant provisions of the new Constitution in this respect are **Section 44.1**, which deals with the national parliament and covers what powers the national parliament has to pass laws on all matters outside those which are listed in Schedule 5. What this means is that the national parliament has the power to make laws on education.

The other important provision is **Section 104.1**, which gives provincial legislatures powers to pass laws on matters falling inside Schedule 4. Education is such a matter. So the provincial legislatures also have powers to make laws on education other than tertiary education. At the outset, therefore, we have two legislative powers with overlapping authority to make laws on education. I will deal with what happens when they make laws that contradict one another later. Those are the general constituent provisions which are relevant to education.

These constituent provisions create a preliminary legislative power: a power to make laws on all aspects of education, subject, of course, to a proviso that provinces cannot deal with tertiary education, that preliminary legislative power is limited by the Bill of Rights provisions which are found in **Chapter 2.** What Chapter 2 says is that in exercising its power to make laws to make education, there are certain things that the state must do and there are certain things it may not do. Subject to these obligations that it must satisfy and boundaries it cannot transgress, it has a free hand to legislate on education. But there are limits.

What are the obligations and limits laid down in Chapter 2? There are a range of rights which are relevant for the purposes of education. The most obvious one is **Section 29**, which is the education right itself. **Section 29.1a** is most important - it says that everyone has the right to a basic education, including adult basic education.

This right is, in the context of Section 29, an *unqualified right;* other rights conferred in Section 29 are hedged in with internal limitations. It seems to me that when one looks at the structure of Section 29, basic education must be seen as the *primary educational right* and language policy in education must be conditioned by an appreciation that basic education is the primary constitutional obligation of the state.

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[2] Extracts from the Constitution appear in Appendix 1.

The choice of language policy options which the state takes cannot compromise an individual's access to basic education. To do that would violate Section 29.1, which is the primary education right. **Section 29.2** deals with language specifically and says that everyone has the right to receive education in the official language or languages of their choice in public educational institutions, where reasonably practicable. Immediately, there is an internal qualification here, 'where that education is *reasonably practicable*', thus making it a *qualified right* which is contextually dependent.

The Section continues by saying that in order to ensure effective access to an implementation of this right, the state must consider all reasonable educational alternatives, including single medium institutions, taking into account equity, practicability and the need to redress the result of past racially discriminatory laws and practices.

There are a number of comments to be made with respect to Section 29.2. Subject to considerations of practicability which will generally relate to resource issues, there is an obligation on the state to provide education in the official language of a learner's choice. How the state satisfies this obligation is essentially its business. It has to consider all reasonable alternatives, including single medium institutions; this does not mean it has to adopt a single medium model, simply that it has to consider a single medium model; ultimately it takes its decision on language policy taking into account questions of practicability, equity and redress. Therefore, the obligation on the state is to make education available in official languages of choice, subject to questions of practicability and balancing considerations of practicability, equity and redress.

Section 29.3 deals with independent institutions. Whereas Section 29.2 makes *obligations* on the state, Section 29.3 essentially places a *limit* on the state. In addition, it confirms that everyone has a right to establish and maintain, at their own expense, independent educational institutions that do not discriminate on the basis of race, are registered with the state and maintain standards that are not inferior to, but comply with, those of public educational institutions. The state is under no obligation to fund these institutions. It can if it wants to, in terms of **Section 29.4**, but it is not constitutionally obliged to do so. However, the state cannot prevent such an institution from being established or operated.

At the outset one should note that 29.3 does not mention language specifically, but clearly incorporated within the ambit of these independent educational institutions which 29.3 describes, would be institutions which are structured around a common language. That much is also clear from **Sections 30** and **31**, which are additional rights in the Bill of Rights, Section 30 dealing with the rights of individual right users and Section 31 dealing with the rights of people belonging to linguistic communities.

These two sections are again rights which primarily place limitations, rather than obligations, on the state. What the state cannot do is prevent individual language users from using the language of choice; similarly, they cannot prevent linguistic communities from forming associations around their language, or taking measures to protect and promote the use of their language. The state, while it cannot prevent that, is under no obligation in terms of Sections 30 and 31 to foster those sorts of

associations or to foster individual language use outside of the context of language use in public educational institutions.

All discussion of language must also be seen within the context of **Section 9** of the Constitution, which is the *equality right*. The equality right is a very important right in the Bill of Rights. It is a right that is reflected not just in the Bill of Rights but also in the preamble in the limitations clause to the Bill of Rights, where equality emerges as a central theme in the Constitution.

What is significant is **Section 9.3**, which says that the state may not unfairly discriminate, directly or indirectly, against anyone on one or more grounds, including *race, gender, culture, language and birth.* There are two points of significance in this respect. Firstly, what does the equality right mean for language policy and public choices of language policy? The significance of the equality clause for questions of language in education is that state choices in language policy cannot discriminate unfairly against language users - against particular language users. That would amount to discrimination on grounds of language, which would be prohibited by Section 9.3.

The second significant aspect in Section 9.3 is that of direct or indirect discrimination: even if it is not the intention of state policy, the effect of that policy can be to discriminate. As a result, it is not enough for the state to say, 'Here is the language policy which we have formulated, we have formulated this language policy because we want to be fair to everybody'. If that language policy has good intentions but in practice has a discriminatory effect because of the way that it is implemented, meaning that certain language users are privileged over others, that would amount to a form of indirect discrimination.

It is possible to have discrimination without motive, even if no discrimination is intended. If the effect of what you do is to privilege some groups over other groups, that amounts to indirect discrimination and that too is prohibited by Section 9.3. What that possibly means is that there is a need for constant reviews of the effect of language policy choices that are being made in the context of education, so that if they are having a discriminatory effect they can be changed. If they are not changed, there can be constitutional challenges to them. Those are the principal provisions of the relevant clauses in the Bill of Rights, which either place limits or obligations on the state which are relevant to language policy on education.

There are other provisions of the Constitution which I would like to mention briefly, which are possibly of significance to language policy in education. The first is the official languages clause, which is **Section 6. Section 6.1** identifies the eleven languages as the official languages of South Africa. It might sound profound to identify eleven languages as official languages. In fact, this has very little legal significance at all, because there is nothing *legally binding that follows automatically from the status of the language being designated an official language.* All that designation of a language as an official language means is that when other laws are made which refer to official languages, they will be interpreted to refer to all eleven of those languages. So the fact that a language is an official language does not mean that, in its own right, a language must be a language which is used in parliament, or used in schools. In fact it carries no meaning at all.

The one aspect of Section 6 which is significant is **6.2** which says, recognising the historically diminished use and status of the indigenous languages of our people, the state must take practical and positive measures to elevate the status and advance the use of these languages. In other words, there is a general obligation on the state to promote the use and status of indigenous languages of South Africa.

1. National and provincial provisions for language policy

As pointed out above, the constituent provisions create two bodies with legislative power to make laws over education, the provincial legislature and the national parliament. It is important to realise, first of all, that the power thus created is an *overlapping power*. Provincial legislatures have complete power to make any law about any aspect of education other than tertiary education. They are not confined to dealing with aspects of education that do not require national uniformity. They can, if they choose, make laws which do not require national uniformity. They can, if they choose, make laws on issues of education which, properly conceived, should be issues which have uniform national standards.

By the same token, the national parliament has complete powers to make laws on education. It is not confined to limiting its laws to those where national standards are required. It can legislate in areas where national standards are not needed. They both have a complete overlapping power to make laws on education, and this raises the issue of what happens when a province makes a law which clashes directly with the national law. That issue is dealt with in **Section 146** of the Constitution. Broadly, what 146 says is that where the subject matter which has been legislated by both national government and provincial government, where that subject is a matter in respect of which national uniform standards are necessary, then the national law will prevail over the provincial law. Where it is not a matter of national uniform standards, then the provincial law prevails over the national law.

The institution that decides whether the national uniform standards are necessary is the Constitutional Court. Thus, if there are two pieces of legislation on education and language, one provincial, one national, which clash, the Constitutional Court will broadly ask the question, 'is this an area of education where there should be national uniformity?' If it is, it will rule that the national law prevails. If it is not an area where there should be national uniformity, it will rule that the provincial law prevails.

Two further points can be made in this regard. When the Constitutional Court looks at two pieces of legislation, a national and a provincial, both dealing with the same subject matter, the Constitutional Court is instructed at the outset to read those two pieces of legislation as compatible if it possibly can. So if it is at all possible to render those two pieces of legislation consistent, the Constitutional Court will do so, and will put in an interpretation on the national law and the provincial law which renders them compatible. It will only choose which law it is going to override if a conflict is absolutely unavoidable: that is the first issue to bear in mind.

The second is that when the Constitutional Court encounters a conflict and it decides that there is a clear conflict between provincial law and national law and one of them

has to prevail and the national law must prevail, the effect of that is not to invalidate the provincial law. It is really to suspend its operation while the national law carries on. So if, for instance, the national law subsequently gets amended and conflict is removed, then the provincial law will be reapplied and will fill the gap that it used to occupy. So it is not that a conflicting law actually invalidates the one that is overridden. It merely overrides it for however long the conflict remains. If either of the laws are subsequently amended to remove the conflict, then both laws will remain valid.

The Interim Constitution contained **Clause 247,** which dealt with the powers of government to change powers and functions of managing bodies of schools, and placed certain limits on what the state could do in that respect. There is no comparable clause in the new Constitution, so that whereas under the Interim Constitution a negotiations process had to precede any attempt to change powers of governing bodies of schools, that is no longer the case. If the state wants to put into place a new language policy which will have the effect of changing the powers of governing bodies of schools, it is under no constitutional obligation to negotiate that with governing bodies in advance. If, for political reasons, it chooses to do so that, it is perfectly entitled to, but it is not constitutionally obliged to do so.

The legal role of the provinces in language policy and education

Brendan Barry

This paper deals with statutory provisions which impact on language in public school education and the variety of legislation that is in existence, or will soon be in existence. Specifically, it considers the language provisions in the South African Schools Act and then goes on to deal with provincial legislation.

Section 6 of the Schools Act, 1996: Language policy of public schools.

6.(1) Subject to the Constitution and this Act, the Minister may, by notice in the Government Gazette, after consultation with the Council of Education Ministers, determine norms and standards for language policy in public schools.

(2) The governing body of a public school may determine the language policy of the school subject to the Constitution, this Act and any applicable provincial law.

(3) No form of racial discrimination may be practiced in implementing policy determined under this section.

(4) A recognised Sign Language has the status of an official language for purposes of learning at a public school.

Section 6 of the Schools Act sets out the manner in which language policy in public schools is to be determined: that the Minister, by placing a notice in the Government Gazette and after consultation with the Council of Education Ministers, may determine norms and standards for language policy in public schools.

The Council of Education Ministers is a consultative structure established in terms of the National Education Policy Act (NEPA), consisting of the members of the Executive Council at provincial level responsible for education in the provinces. This general pattern of national policy formulation includes language policy

Subject to that policy, the body that is responsible for determining the language policy of a public school is the governing body of the public school. The Schools Act creates governing bodies that differ from the past in terms of their composition, power, and function. In determining language policy at a public school, the governing body is subject to the national Act and any applicable provincial legislation. There is a further component of that section which includes a recognised sign language as having the status of an official language for purposes of school education. A similar point, made by Matthew Chaskalson above, is that there is a sub-section to the language policy: no form of racial discrimination may be practiced when implementing language policy at a public school.

Section 5(2) deals with the prevention of language testing. According to this section, the governing body of a public school may not administer any test related to the admission of the learner to a public school, or direct or authorise the principal of the

school or any other person to administer such a test. This came about particularly to deal with the issue of language competence testing and other forms of admission testing being administered by the governing bodies of certain schools and it was felt that such testing would have a profound discriminatory effect. The effect of this section is that there is nothing stopping the provincial department from conducting tests to determine placement, etc., but testing is removed from the ambit of the governing body of a public school. Most provincial education acts specifically prohibit language competency testing as an admission requirement to a public school, which is the framework sketched by the national Act.

As far as other aspects of provincial legislation is concerned, there are two broad trends emerging. The first is characterised by the approach adopted by the Northern Province, Gauteng, Mpumalanga and the Free State, although the abstract of the Free State legislation differs slightly. However, they follow a similar approach to the formulation of language policy. At the outset, they formulate a very similar principle to guide members of the Executive Council responsible for education in the province in determining education policy. One of the principles they address in relation to language policy is that every learner has the right to instruction in the language of his or her choice, where this is reasonably practicable. It really follows the Interim Constitution, which addresses language choice not in a restrictive fashion around official languages, which is the current formulation in the final Constitution. Perhaps it will be useful to deal with the provincial legislation by way of examining the Gauteng **School Education Act, 1995.** Sections 18, 19 and 20, concerning language policy, are reproduced below.

Language policy of public schools

18(1) The language policy of a public school shall be made by the governing body of the school concerned after consultation with the department and subject to the approval of the Member of the Executive Council.

(2) The language policy of a public school shall be developed within the framework of the following principles:

a) The education process should aim at the development of a national, democratic culture of respect for the country's diverse language communities.

b) Within practical limits, a learner shall be given the right to language choice in education.

c) School language policy shall be designed to ensure the maximum participation of learners in the learning process.

d) Special measures should be taken to enable a learner to become competent in the languages of learning of his or her school, and where practicable, to enable a learner to use his or her language of choice where it differs from the language of learning of his or her school.

e) School language policies should be coordinated at a district level and should take into account the human and material resources.

f) On completion of the ninth level of education a learner should have acquired satisfactory standards of competence in at least two of the official languages.

g) Special measures should be taken to promote the status and use of official languages which have previously been neglected or discriminated against by education authorities in the province.

h) There shall be a duty on all public schools and on the department to ensure that educators acquire the special skills necessary for teaching in a multilingual educational environment.

(3) If, at any time, the Member of the Executive Council has reason to believe that the language policy of a public school does not comply with the principles set out in subsection (2) or the requirements of the constitution, the member of the executive council may, after consultation with the governing body of the school concerned, direct that the language policy of the school shall be reformulated in accordance with subsections (1) and (2).

(4) If the governing body of a public school is aggrieved by a directive of the Member of the Executive Council issued under subsection (3) with respect to the school concerned, it may within 30 days after receiving a directive contemplated in subsection (3), appeal to the Executive Council, in writing, setting out the grounds of the appeal.

(5) The Member of the Executive Council shall not take part in the deliberations of the Executive Council in respect of an appeal brought under subsection (4).

(6) The Executive Council shall consider an appeal contemplated in subsection (4) and may confirm or set aside the decision of the Member of the Executive Council.

(7) The Executive Council shall as soon as may be practicable-

a) notify the appellant governing body of its decision; and

b) provide the appellant governing body with written reasons for its decision.

(8) If an appeal under subsection (4) is dismissed by the Executive Council, the language policy of the school concerned shall be re-formulated in accordance with subsections (1) and (2) within 60 days after the date on which the appellant governing body is notified of the decision of the Executive Council.

Language and discrimination

19(1) Language competence testing shall not be used as an admission requirement to a public school.

(2) Learners at public schools shall be encouraged to make use of the range of official languages.

(3) No learner at a public school or a private school which receives a subsidy in terms of section 69 shall be punished for expressing himself or herself in a language which is not a language of learning of the school concerned.

Recognition of sign languages

20(1) The Member of the Executive Council may by notice in the Provincial Gazette recognise any sign language which in his or her opinion is used by a significant proportion of people communicating in a sign language in the Province.

(2) For the purposes of any matter related to school education in the Province, any sign language recognised under subsection (1) shall have the status of an official language.

In addition to the above sections, **Section 5(b)** of the Gauteng School Education Act 1995 states: 'Every learner shall have the right to instruction in the language of his or her choice where this is reasonably practicable' It is under this section that the

Member of the Executive Council (MEC) will formulate language policy in relation to public schools. Important to note though, are the consultative frameworks of the provincial Acts. To a greater or lesser extent, the approach taken with the establishment of education councils, of education and training councils as advisory and consultative council structures, through which the MECs, or with which the MECs, must consult prior to formulation or implementation of education policy, is broadly similar for all the provinces.

As far as the language policy at specific schools is concerned, the route taken by the Gauteng Act in **Section 18** above, stipulates that the language policy of a public school is made by the governing body of that school after consultation with the department and subject to approval of the MECs. That section also provides MECs with the power to intervene where they feel that the language policy is being implemented at a public school contrary to the provisions of the Act and the principles guiding the formulation of the language policy at a public school.

The MEC, in that context, can require that the school go through the process of redetermining its language policy consistently with the Act. That creates fairly circular interests, where the governing body, in determining the language policy, must first consult with the department to receive guidance and the final decision is subject to approval by the MEC.

Language policy in the Gauteng Act is defined as including matters relating to the language or languages in which learning and teaching take place at the school, the languages which may be studied at the school, the languages in which the school communicates with educators, learners and parents, and the support the school offers to learners whose language of choice is not one in which learning and teaching take place at the school.

Section 18(2) of the Act sets out important principles to be taken into account in guiding the formulation of language policy at the level of a public school. These involve language choice as a constitutional consideration, special measures to enable learners who are not competent in the language of instruction at the school to become competent, and district level co-ordination of language policy, taking into account the availability of material resources in a district. All the provincial Acts mentioned above also recognise sign language as having status as an official language for the purposes of school education.

The one difference in the route Mpumalanga takes is that the language policy of a public school is determined by *District Council*, as opposed to the governing body of the school. District Council, as a structure in that province, has been set up to co-ordinate a variety of policy issues at district level and sub-regional level. It determines language policy in consultation with the department and the governing body and subject to the approval of the MEC, who envisages a degree of agreement being required in the formulation of language policy at school level.

The other trend taken by provinces in relation to the formulation of language policy at school level can be seen in the example of the Western Cape. The Western Cape also makes provision in its draft School Education Bill for the formulation of policy in

relation to school education by the provincial MEC. It sets out a required consultative process, firstly with an Educational Council which it sets up and then with organised parents and teachers in the province.

The Western Cape draft legislation also makes quite explicit that this policy, formulated by the MEC, is subject to national policy formulated by the national minister. It also subjects the MEC's educational policy to a principle which differs somewhat from that adopted by the other provinces. The principle is that every pupil shall have the right to mother-tongue education, including the right to take his or her mother-tongue as a subject in so far as it is reasonably practicable, as it is an adaptation of a constitutional provision. The only manner in which it deals with language explicitly in the Bill beyond that, is that the medium of instruction at a school is determined by the governing body, in consultation with the parent community of the school. Thus a degree of power is delegated or assigned by the Bill to the governing body in determining medium of instruction. The KwaZulu-Natal Act has it that the medium of instruction of the school is determined by the provincial MEC, although, all MECs are referred to as 'Ministers' in its legislation. In contrast to the Western Cape language policy is removed from the discretion of the school governing body.

The manner in which possible conflict would be resolved (a subject dealt with by Matthew Chaskalson in the previous paper) shows that between the national legislation on language policy and the provincial legislation, there are not too many conflicts that could not be resolved. There are perhaps two, in the cases of Mpumalanga (which cedes decision making by governing councils to district level) and KwaZulu-Natal (which leaves all decision making powers to the provincial Minister of Education). Both of their Acts modify the body that determines language policy at school level. The provinces will have to consider what their stance is on that and as Matthew Chaskalson pointed out above, Section 146 of the Constitution will come into play in the event that conflict remains. However, it is important to note the different levels of policy formulation, that a national policy must be determined by the minister at national level after a process of consultation with the provinces through the Council of Education Ministers. That policy must be published in the *Government Gazette*.

Provincial policy, in so far as the national Act would prevail, is subject to the provisions of the national Act, the provincial Act and also the consultative process of those provincial Acts as set out. There are subtle differences between the approaches of the provinces and they will have to be aware of that.

In conclusion, in most of the provinces the determination of language policy will be at school level by the governing body, subject to the provisions of those provincial Acts, the national Act and relevant policy impacting on them.

Section 3: The nature of language policy and process: the Pan South African Language Board and the National Education Department

Introduction

The conference was addressed by a representative of the Pan South African Language Board (PANSALB), Khethiwe Marais, a translator. Although also a member of PANSALB, Dr Neville Alexander was for the purposes of this conference representing the Language Policy Committee of the national Department of Education.

PANSALB is a statutory body, established by an Act of Parliament (No 59 of 1993) to provide for the recognition, implementation and furtherance of multilingualism in South Africa. Its general objectives are wide-ranging and not specific to education. These objectives are distilled in Section 3 of the Act and include the briefs to:

- promote respect for the constitutional provisions on language;
- further the development of official South African languages;
- promote respect for and the development of other languages used by communities in South Africa;
- promote respect for multilingualism in general;
- promote the effective use of South Africa's linguistic resources.

In addition, Section 8 outlines some of the functions of PANSALB. It is empowered to:

- make recommendations with regard to any proposed or existing legislation or practice dealing directly or indirectly with language matters and policy at any level of government, and to recommend the amendment, repeal or replacement of such legislation, practice and policy;
- request any organ of state to supply it with information on any legislative, executive or administrative measures adopted by it relating to language practice or policy;
- advise any organ of state on the existence of any proposed or existing legislation, policy or practice.

From the three key functions listed above, it can be discerned that PANSALB is in essence an advisory, investigative and research body, its role being to coordinate and promote the development of South African language policy, legislation and practice. The contributions from two of its members were significant, as the Board will be involved in advising on all aspects of language education policy, notwithstanding the fact that, in the process of policy formulation, the final authority is the Minister of Education.

Functions of the Pan South African Language Board

Khethiwe Marais

I would like to give some indication of the functions and powers of PANSALB. As they are quite extensive, I will not go through all of them, but will focus on its obligatory functions.

The Board shall make recommendations with regard to any proposed existing legislation, practice and policy dealing directly with language matters at any level of government. In addition, the Board shall make recommendations to all heads of state, at all levels of government, where such action is considered advisable for the adoption of measures aimed at the promotion of multilingualism within the framework of the Constitution, and the Board shall actively promote an awareness of the principle of multilingualism as a national resource by developing, administering and monitoring access, information and implementation programmes. The Board shall actively promote the development of previously marginalised languages by doing the following: developing, administering and promoting access, information and implementation programmes, undertaking such studies for reporting on or relating to language development as it considers advice on the existence of its powers and performance of its functions.

So far only two provinces have established a provincial language policy. Specifically on the issue of translation facilities, we have realised that there are a number of problems. One of them is that whilst it has been done informally, either by organisations or by individuals, we still need to go through a process of setting standards. We need to do this because while there are some standards that have been established with languages themselves, some of them are very, very controversial. They were developed in a particular era within certain kinds of ideological paradigms. We need to begin the process of consulting a whole range of stakeholders and establishing who they are.

Past political ideology has disappeared with the introduction of a democratic process of developing languages, which means now we need to review the whole method and process of developing the languages themselves. We find that languages have developed in isolation and African languages particularly are underdeveloped, although unevenly so. For example, Zulu is more developed than Venda.

This has implications as far as the teaching and learning of those languages is concerned. At present the Board accepts that we are not able to use African languages fully, for example in science and in maths education, because the kinds of concepts that were developed in the past would not make very clear distinctions and definitions. Again, in legal documents and Acts of Parliament, it is not possible to use an ambiguous word where very clear distinctions are required. In addition, we have to cope with a substantial ideological bias from past attempts of the old language board structures to develop language.

We need to begin from scratch, even to define the process. As a translator, I have often said that it is insufficient to use the kind of definition one finds in a dictionary.

One needs concepts that have evolved democratically among the people. African languages are still perceived through a deficit concept, their speakers often perceived as neither cultured nor 'civilised': this is an indication of what needs to be done.

Alongside the process of establishing translation facilities, we need to develop the languages themselves in such a way that they are able to express concepts of the modern world we are living in. This needs a whole range of stakeholders, not only language teachers but people who use the languages in their everyday lives within various specific disciplines, in science, law, medicine, and a whole range of other contexts. This process is not happening yet. There are a lot of problems in bringing it about, and so many tasks to undertake, from the whole process of dictionary making, to setting acceptable standards among educationists, and involving all the stakeholders referred to above within this process.

Language policy and the national Department of Education

Neville Alexander

I was asked to give some input with regard to the central Department of Education's policy development process in general. A Language Plan Task Group (Langtag) was set up by the Minister of Arts, Culture, Science and Technology in November 1995, and was asked to report back to him by the end of July 1996. We in fact handed in our report on August 8, 1996. Our assumption has been that we needed to plan our language resources in this country in the same way that we planned all our other resources, or that we should be planning all our other resources, and that any discussion on language policy, whether in the professional sector, the health sector or any other sector, needed to be located within such a broad language plan.

The point must be stressed that when the Language in Education sub-committee (Langed) of Langtag was established, its point of departure was firstly, to look at how language policy in education interlinked with the broader language plan that we were busy trying to define and secondly, to make sure that whatever we were doing in the schools or universities or technikons, there was not going to be any undermining or contradicting of other developments.

There were certain fundamental principles on which there was broad consensus in Langtag. The first of these was that language policy is an integral part of general social policy; you cannot broach language policy in isolation. The second point was that language must be approached as a resource and not as a problem. In other words, we have to get away from the mindset of yesterday which saw multilingualism, the diversity of languages in the country, as a problem, and begin to approach the issue as being a national resource. We have to work with, not against, the grain of our society, multilingualism. The third point was that language is a fundamental human right and that right rests in the individual. The state has a duty to facilitate, coordinate and initiate strategies geared to the promotion and protection of the language rights of the citizens of the country. The fourth point was that persuasion, encouragement and incentives rather than coercion are the appropriate policy stances in the highly sensitive area of language practices and language usage. Of course how you interpreted that in actual terms, in practice, would vary from situation to situation.

Fifthly, there was agreement that no language is superior to any other, but that historical developments and previous struggles, including the defining facts of colonial conquests, racial discrimination and apartheid, have made it possible for English and Afrikaans to become the dominant languages of power in South Africa. Since there has been no social revolution in South Africa, we have not displaced by force the previous rulers of this country, it is not possible to start from scratch. The situation is one of compromise, of negotiation, and this situation will take even longer than if there had been a revolution and clearing of the grounds. You need time to change language policy and even more to change language practices. That does not mean that you must not start, it does not mean that you must not be vigorous, but it does mean that you must not excite false expectations amongst people. Lastly, we believe that language

can and should be planned, especially in this multilingual society. There is a false and cunning notion around that you should not plan languages, that you should leave them alone and not intervene. We say in Langtag, languages can and should be planned. Obviously this will need time.

As far as language in education is concerned, the policy drafting group in the Department of Education and Langed were working at more or less the same time. They were intersecting, in other words, and as a result the committee members met from time to time to discuss what they were doing. They found that there was much symmetry. I want to stress that in Langed, the paradigm within which we worked was in terms of additive bilingualism and additive multilingualism. In a strong interpretation of additive multilingualism, we mean that the home language, or mother-tongue, or first language, or principal language - call it what you will - needs to be maintained throughout the education and career of the learner, as far as it is possible to do so. At the moment, it is simply not possible to achieve this in some of our languages, as it is for English or Afrikaans, but fundamentally this is the thrust of the policy. Other languages are added to, but never displace, the home language as the particular language of teaching. This is a very controversial position, which we need to come to grips with.

At the same time, we need to accept the hegemony and usefulness of English as an international language, and therefore that access to English has to be facilitated for all learners in this country. We take it for granted that there can be no questioning of this position, that if we are simply going to rest content with access to English for middle class people, regardless of colour, then we are simply going to perpetuate the same oppressive policy of the past and the neocolonial policies that most other African countries have in fact perpetuated. We must facilitate access to English for all, working class included. There is a tendency among middle class people like ourselves simply to put it to one side and not to talk about it. It needs to be spoken about openly, otherwise we are just fooling ourselves. We need to undertake the collection, collation and compilation of base line data, on matters such as how many teachers are qualified to teach in particular subjects, how many learners in a particular area speak particular languages, what glossaries and dictionaries are available, and so on. Unless you know such things when you plan language policy in education, you are planning in a vacuum.

We stress that no language should be learnt compulsorily. You cannot force people to learn languages. Some people will disagree vehemently with this, as I know from other discussions, but our position is that no subject, let alone any language, should be imposed on a learner. He or she must wish to learn that subject, and incentives must be built into the process. People must understand why they are learning, because then there is a better chance that they will learn properly. Drilling learners will not achieve the desired result.

As a result of the Langtag process and, more particularly, the Langed process, we came to understand, in a very concrete way, that sign language, the first language of the deaf community, is in fact a natural language. I personally came to understand this for the first time, and that it must be an integral part of the educational system. In Langed, I went so far as to propose that all children learn basic signs in primary school so that the marginalisation of the deaf community is countered right at the base, so to

speak. The proposal was slightly altered in the final document, because of the principle that we should not force children or learners to learn any language, not even sign language.

In terms of the Langed process, the ultimate goal of the new language in education policy will be to encourage the acquisition of at least two, but preferably three, South African languages, by all South African students, even if at different levels of proficiency, by means of a variety of additive bi- or multilingual strategies. It is strongly encouraged that where the students cover one first language, if either Afrikaans or English, an African language should be the additional language. We wish to ensure that all learners, required to be taught through the medium of any one or more of the South African languages or required to be taught these languages as subjects, will have access to a competent teacher as from the year 2010. In other words, we have set ourselves a target, the year 2010, when any learner who wishes to be taught in any South African language, through the medium of any South African language, should be able to be so taught. This is a challenge to colleges of education, universities, faculties of education, to the whole teaching profession, to meet the target by the year 2010.

A group was commissioned (which did not include any members of Langed initially) to produce a document, which was finally entitled *Towards a language policy in education*. In my view, it combines state of the art knowledge of issues in multilingual education with a balanced understanding of the peculiarities and sensitivities of the language question in South Africa, as well as a sense of the technical and bureaucratic issues in the implementation of policies. It is for that reason that I call this a pathfinding document. It, as well as submissions from literally hundreds, if not thousands, of people, organisations, universities, schools, PTAs and so on, was used to draft a policy document in the Department of Education. This is a confidential document, but it is very widely known, to the extent of being an open secret, so I shall refer to it very briefly, by way of explaining certain things.

The document explains that every policy recommendation is, of course, drafted within the framework of the Constitution, both the Interim and the new Constitution, as well as against the background of the first and second white papers and the draft South African Schools Bill. This Bill has been amended three times to date. It states very clearly that one of the aims of the policy for language in education is to promote full participation in society and economy, through equitable and meaningful access to education.

A second aim is to establish additive multilingualism as the normal approach to language in education in South Africa. This issue, for a number of people, is not just controversial but unacceptable. Another controversial point for many people - especially those whose languages are not official but who are South Africans and insist that development of their languages should also be part of departmental and government policy - is to promote and develop all the official languages. Another aim is to support the teaching of all other languages, including sign language, languages of international trade and communication.

The most controversial aspect of the policy is the issue of whether or not single medium schools shall be allowed. One of the reasons why the Minister of Education was unable to declare the new language policy on the 16 June 1996, as he had intended to do, was that there had been an objection to the draft as it stood then, because it did not include the possibility of single medium schools. Section 29(2) of the new Constitution was the result of negotiation and compromise. A special committee was established to look into the practicalities of this particular aspect, to find out under what conditions a school could remain single medium, or should become dual or parallel medium, or in what way it would promote multilingualism.

In principle, however, it is clear that the definition of additive multilingualism can be, and in fact should be, extended to include the possibility of single medium schools, provided that those schools promote multilingualism, that they effectively teach learners a second South African language, and any other languages that those children wish to learn. Of course this does not apply only to schools; it can be applied to any educational institution.

In the tertiary sector, the National Commission on Higher Education suggested that we accept that English and Afrikaans, in most cases English, are the languages of tuition. Effectively, they can be used at tertiary level as languages of tuition and clearly as languages of learning, but the African languages specifically need to be enabled through practical measures taken by universities, technikons and other tertiary institutions, to become languages of tuition if the speakers of those languages wish them to become such. It is quite possible that people will not want, for example, Zulu or Xhosa, but they should, at the very least, be able to choose. At the moment they cannot choose because these languages have been disadvantaged quite deliberately.

Apart from the whole infrastructure of multilingualism - materials, books, dictionaries, interpreters, translators and so on - the most important thing is clearly the need to train teachers and lecturers at universities and technikons to be able to teach their subjects, their disciplines, through the languages which their learners are best in command of. Those are essentially the points that came out of that investigation. We looked at the rest of Africa and, with the exception of Tanzania, we found no single African country other than Somalia where an African language has been developed to a point where it can be used as a language at tertiary education level. Even in Tanzania there is actually a movement back to English, because Swahili is only used in a very limited way.

However, in spite of all that, the position that was taken that if the political will exists, the resources are available in South Africa to develop a democratic language policy - one that enables all South African citizens to have control of their own destiny. Such a language policy is, I believe, possible in South Africa today.

Section 4: Language policy and practice at school level

Introduction

The following four papers were chosen from the panel discussion on language policy at school level. The first two papers, by Dodds Pule of the English Language Teaching Information Centre (ELTIC) and Sarah Slabbert of the University of the Witwatersrand, deal with an innovative research project carried out in conjunction with the Gauteng Education Department. The project has involved an experiment with twelve school communities, which have participated in an informed and democratic process enabling them to consider suitable language policies for their schools. This experiment anticipates the process laid down in the Constitution, the Schools Act of 1996, and the thinking involved in the policy document *Towards a National Language Policy for Education*, which attempts to construct a democratic procedure to work out a suitable language policy at the level of school governance. The Gauteng project is located in a complex sociolinguistic environment and, as an experiment, represents a pioneering attempt to look at language policy construction at school level. The third paper, by Mervyn Ogle of the English Language Education Trust (ELET), is a brief comment on the interim situation in schools in KwaZulu-Natal, a somewhat less complex socioliguistic environment than that in Gauteng. The fourth paper, by David Gough, of the Department of Linguistics at the University of the Western Cape, looks closely at the question of language as a teaching and learning subject in the context of changing language policy.

The ELTIC project

Dodds Pule

ELTIC works in teacher development and language education. For our organisation, language in education is not just an issue of language as a subject, but the role of language in learning. What ELTIC has been developing with other projects is, we believe, very important. One of the things that became apparent to us was the mismatch between the policies which people proclaimed, desired and are presently formulating, and the actual practices at schools. Therefore, we tried to use our experience of the practices at schools in order to formulate language policies. We felt that we could not separate practice and policy. The Constitution looks at four basic issues concerning multilingualism: redress, equality, non-discrimination and access, and we feel that these four major principles of our Constitution should be passed on to our learners, so that policy and practice can be brought together.

The Gauteng school language policy states that governing bodies of schools will formulate language policy according to specific principles. These principles are specified as parameters, but there is not enough guidance for people to formulate policies for themselves. The devolution of power involves empowering people to be able to do certain things for themselves. Even high school students will be able to contribute to the process of decision making. This is a new process in South Africa. However, the principles can be misinterpreted and misused. Our aim, therefore, is to assist schools to be able to formulate language policy in an informed way, and that is how we began a project called Puo Dikalong, which in Sesotho literally means 'languages in schools'.

Our programme in essence looks at three broad areas, or phases. The first is what we call the information phase. This involves holding workshops to inform schools about what they need to know: the Constitution, the relevant legislation, the parameters given to the governing bodies of the schools, the history of attempts at bilingual or multilingual education. In South Africa we tend not even to know that other countries have the same problems, or what attempts to resolve them have been made.

The second phase involves giving teachers of particular schools, and people related to the schools, research skills. For example, how to analyse and interpret data, and how to use that to draft a language policy. The third and final phase involves the drafting and re-drafting of language policy. Here we consider issues of curricula, governance and resources, such as deployment of teachers. You cannot talk of changes in language policy unless you also adjust the kind of teachers that are in schools. People tend to look at school language policy as a decision about the medium of instruction (languages of learning) only, instead of treating this as one key part of language policy. The schools need to decide in addition which languages can be taught as subjects, and which are going to be used for communication, both internally within the school and externally with the community.

An example of the complexity of external communication with a community comes from one school where we did research. The school, which was very democratic, asked

the parents to write submissions in English as to what kind of languages they wanted. At this school very few pupils or parents understood English. This shows the need for an oral mode, or a combination of oral and written modes, so that people are not excluded from participation in the democratic process. Who makes the decisions, where the decisions are made, and what languages are used in making those decisions, all have to be part of language policy.

In conclusion, this is what the project is about. The learners have the right to participate fully in the classroom, the learners have the right to express themselves in the classroom and people should be given the chance to use a language that they feel comfortable with. That is what Puo Dikalong is all about.

Researching the language context for language policy decisions at school level

Sarah Slabbert

ELTIC's Puo Dikalong project, outlined by Dodds Pule above, envisages that schools taking part in the project will base their language plan on four sets of information: a questionnaire; focus groups with learners, teachers and parents; assessment tests; and classroom observation Classroom debating, planned as a means to observe current language practices in and outside the classroom, unfortunately had to be cancelled because of time pressure.

The questionnaire was aimed at background information on schools, at the school community, as well as classroom and centralised resources. It covered the particulars of the school, the history, the area, the languages of learners, languages of subject, physical resources, the personnel, including language distribution, qualification, the learners, community and then any additional information that the working group thought might be necessary.

Focus group discussions, conducted separately with parents, learners and teachers, became the major research instrument to assess current language practices, as well as to access the social needs of learners, teachers and parents in terms of language. The discussions, furthermore, included information on the language resources and language needs of teachers and learners.

The following questions made up the core of the investigation:

- How do learners feel about the issue of official languages, the knowledge and usage of many languages, the development of other languages, the relationship between language and culture?
- How do learners feel about the relationship between languages of learning and languages of instruction? How do they feel about English being the only medium of instruction in schools? How do they feel about instruction in their home languages? How do they feel about the use of many languages in teaching materials or for assessment?
- How do learners think the school should help those learners with a home language that is different from the languages of instruction?
- What languages should be offered as subjects in schools and what comments do learners make about the way in which languages are currently being offered as subjects?
- How do they feel about language purity at school? This was particularly the issue in the case of African languages and in the urban environment, where there is tension between the standard African languages being taught in the schools, and the urban variety which was being used by the students in the playground, and by the teachers themselves.
- What do learners and teachers say about social interaction between different language groups?

- What changes would the learners like to see in their school language policy? What do they think the implications would be?
- Were there any contradictions in their responses to the above questions?

Notably, we found that learners or parents or teachers would, at some stage of the discussion, be of a certain opinion and later on in the discussion they would contradict themselves. In addition, as is always the case with a project like this, we encountered certain problems. From the beginning, the time frame was a problem because a deadline was set for the end of 1996 and procedures simply did not go as fast as we had envisaged. That is one of the reasons why we had to drop some of the research instruments. Secondly, there were problems with communication not only within the project team, but also between the schools and the department. Not all the schools have fax facilities, so in many cases documents have to be physically delivered. Thirdly, there was also distrust in the case of some schools about what was behind the project, what the hidden agenda of this project was. This was particularly the case with the Afrikaans schools, one of which dropped out of the project for that reason. There was also the attitude from some of the schools that 'this is just another thing that the department is burdening us with, we are already burdened by so much work, and this is just extra work we must do'. And fourthly, there was a definite lack of skills, both on the part of the project team and on the part of the schools, in the working groups. Research instruments like the focus groups and qualitative research methodology were new to the working groups at the school and also to many of the members of the project team, so we had to include a training component, both for the project team and the working group, which slowed down the process.

The participating schools received information such as school profiles and transcriptions of focus group discussions. Working groups have been trained to analyse the data, and now they have to write a language plan for their school. What are the issues facing them? The first one is the discrepancy between current language policy and practice. We have found that, in many cases, the current official language policy is a myth in schools. Teachers and learners have acknowledged that they use multiple languages in various configurations in those schools where the official language of learning is different from the first languages of learners and teachers. Teachers will employ all the languages that they themselves are resourced with in order to make their learners understand as best they possibly can. Learners will group themselves according to the languages that they know and they will help each other in the classrooms. In cases where teachers are not competent in the first language of a learner or learners, teachers will actually use these informal structures to support the learning process.

I will end with some examples. You might find a Zulu child in a predominantly Northern Sesotho classroom, but there will be some learners with a knowledge of Zulu. They will group themselves around this learner and help her with her work as best they can. Resistance against the use of multiple languages seems to be correlated with teachers' multilingual skills. At the one extreme you will find an English speaking teacher saying that African children at primary schools should only learn English and nothing else because they are - I quote - 'not able to understand geography and history in English'. At the other extreme, there is the very pragmatic attitude of teachers who

are able to speak the languages of the learners, who will use whatever languages they have to make their learners understand. How do you interpret these discrepancies between official policy and the practices in a school? What do they mean? Why do they exist? And how do you marry these discrepancies in a language plan for your school?

Language education and the policy process in KwaZulu-Natal

Mervyn Ogle

This is a brief overview of what the English Language Education Trust (ELET) does countrywide, but particularly in KwaZulu-Natal. ELET was founded in 1984 in response to a need to improve the quality of English teaching, especially where schools were using, according to the policy of the time, English as a language of instruction in a second language environment. In spite of our support for the policy of multilingualism, we still feel that English has hegemony. We are trying to ensure that if English is being taught, it should be taught well, so that everyone will have equal access to it. So in a sense we are still well in keeping with the Constitution. We offer both classroom-based support for English teaching and courses, particularly in rural areas. We also offer courses in and around Durban, where teachers come voluntarily to do certificate or diploma courses in English. Our main course is a 150 hour course, called the 'Certificate for Overseas Teachers of English' validated by Cambridge University, which has been largely adapted for classrooms in South Africa. There is no kind of conscription of teachers according to any government plan; it is merely a response to a need that teachers feel.

The kind of multilingualism that we support and promote is not actually official choice of a language, but in the same way that ELTIC does, we see multilingualism as a device or strategy that can be used quite effectively in schools where English is the medium of instruction. In all our visits to schools, working with teachers, we encourage the use of whatever language best facilitates interaction. For example, in reading we would encourage children to give their responses in their mother tongue and engage in that medium, rather than to constrain them or force them to use a language that they are not comfortable with. Thus we see multilingualism as a device rather than as an official policy, which we encourage, even though the schools that we are working in have opted for English as a medium of instruction.

I am reporting what the teachers have told me about their choices in terms of language policy, which is not necessarily my own position on this. The constraining effects of the old order on policy formulation and policy implementation in KwaZulu-Natal are very alive. Although we try our best, there are many factors preventing us from doing things in the correct way.

The information I am presenting comes from nineteen interviews with teachers. Each interview took the form of a questionnaire which was administered while they were sitting in the classroom. They were asked a number of questions and in some cases, where there seemed to be certain contradictions, I interviewed those teachers again to correct any misconceptions about the questions. The class comprised eight teachers from junior primary schools in and around Durban, two from higher primary schools, five from combined primary schools, two from secondary schools and two from special schools, one of which was a school for the deaf.

The key questions were :

- What languages are taught as subjects? (Not as languages of learning, but as subjects)
- Which grades were these offered in?
- What was the medium of instruction (language of learning) in each grade?
- Who determined the language medium policy: the department, or some other body?
- Was it a conscious decision by the staff or was it in consultation with the parents as well?
- When was the policy decided on?

In answer to the first question, that is, the subjects being offered, eleven of the nineteen offered Afrikaans as a subject, and all offered Zulu and English. The varied levels at which Afrikaans was offered would suggest that there is a policy of phasing it out in some schools. It is not evident how that fits in with the language policy that has just come out in KwaZulu-Natal in terms of the provincial MEC determining or deciding on language policy. It is not clear whether these decisions by certain schools to phase out Afrikaans have any legal status or whether they will be legitimised by the Minister. We do not really know what it means for the Minister to decide on language policy. What was notable in these schools, all nineteen of them, is that not a single one offered an African language other than Zulu. Admittedly this survey was done in township schools in and around Durban, and so did not take into account those schools which perhaps might offer Southern Sotho as a subject, near Matatiele, and in the wider Drakensberg area where there is some movement from Lesotho. In all the schools, English is being offered as a language in the first grade, and in two schools English is being offered as a subject from grade 0 as well.

In answer to a question on the English language, of the eight lower primary schools, three had made a conscious decision to use English as a medium of instruction and five had decided to retain Zulu from grade one to three. In the two higher primary schools, English was used as the medium, but no deliberate decision has been made by the school; in other words, there was no language policy - it was merely inheriting the old departmental policy. Of the five combined primary schools, four had retained Zulu in the first four grades, two of these by deliberate decision and two merely following old policy. One had switched to English medium by deliberate choice. At the two secondary schools, predictably, English was being used according to the old policy and of the two special schools, one followed a dual medium policy, that is using both Zulu and English, and the other used English as the medium of instruction.

The schools in our survey did not belong to either the old House of Delegates or Natal Education Departments. Where there have been definite policy changes, these have taken place in the last two years before the present Act was promulgated. It was suggested that some schools have taken up the challenge of institutional choice which the Constitution offers.

In the past we only had enquiries from those using English as a medium in the higher primary schools, but in the last two years we have had a flood of applications for our courses from junior primary teachers, which would suggest that there are certain

anxieties about future trends in their schools. Also, we have been asked to offer, and in the last two years we have offered, a language competency or proficiency course, an English examination for language teachers. This used not to be popular in the past, but now it is becoming quite popular.

As the interview was fairly simple and hurried, I did not have time to question teachers on the process of the policy decision making. There were no questions about who facilitated the process, how it was put through public meetings, how informed the parents were, and so on. None of these questions were asked and this is something we shall follow up. The whole question of resources was not considered. The supplementary resources that are being used in those schools come from ELET and include tape recorders, tapes, and reading material in English - strikingly, hardly anything is available in African languages and teachers' choices or what they perceive as the correct choices, are also influenced by that important consideration. If we are to do something to promote a more multilingual policy in our schools, something has to be done very urgently in order to ensure that the multilingual policy that we are promoting is actually implemented. However, in KwaZulu-Natal there are more pressing political priorities, so the issue of language policy is not being given the attention it deserves.

Language as a subject

David Gough

'Nothing is more calculated to violate one's self esteem than suppression of one's language', said Hendrik Verwoerd when commenting on the granting of the official South African languages to the homelands in the 1960s. In South Africa we have a situation in which multilingualism is underpinned by ideologies in common with previous apartheid policies. The challenge we face is the 'reideologising' of multilingualism, in terms of democracy and equality - this is at the core of educational policy reform.

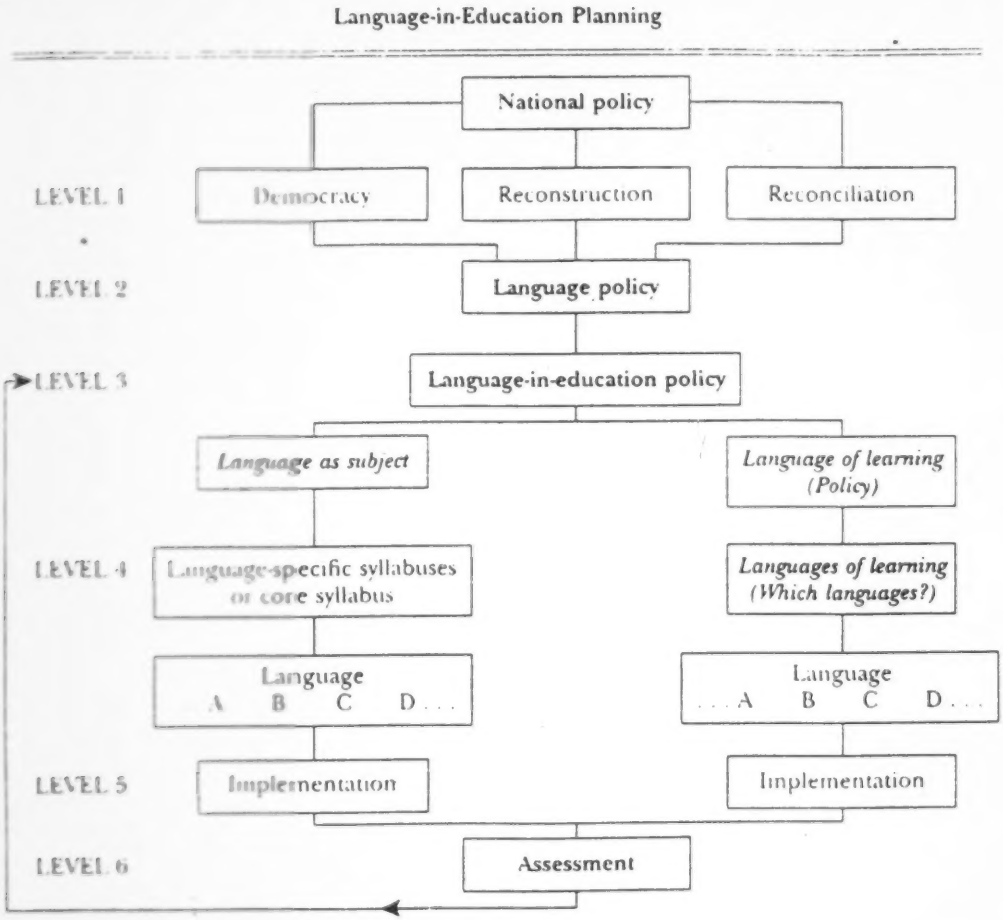

Figure 1: Levels of policy concerning language

At the top level in the Constitution (see figure 1), we have general national policy on human rights, the promotion of democracy for all South Africans, the reconstruction of South Africa, and reconciliation of the people of South Africa.

That filters into language policy at the next level, where policy statements generally state that switching to multilingualism should be seen as a national resource rather than as a problem; that all South African languages are equal and African languages which

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have been previously disadvantaged should be actively promoted. We will try to summarise the kinds of conditions necessary for these goals to be met.

At level three, we find particular language in education policy. Here, one of the goals is to redress past linguistic imbalances and encourage multilingualism, especially the promotion of African languages against the continued dominance of English and Afrikaans. Another principle is ensuring linguistic freedom of choice in terms of languages in society. Finally, we find the need for governing bodies at schools to take decisions regarding language policies.

Level four indicates that language in education policy is made up of two aspects, language of subject and language of learning. Concerning language of subject, one of the most important points to note is the diversion of the single core syllabus for all languages in the school programme. Core syllabus decisions on language of learning have to be made, on the basis of which specific languages of learning will be implemented. The critical stage is, of course, implementation. The second point, frequently mentioned in the literature, is the emphasis on language variety as resource, rather than the exclusivity of a standard form. Finally, a point that is repeatedly made is that the first/second language distinction should not in practice be made, and one should have one particular language syllabus.

As far as language of learning policy is concerned, we know that there is a particular orientation towards a bi- or multilingual language of learning policy. In the past, of course, African children were forced to learn through the medium of English, while English and Afrikaans children had the privilege of learning through their mother tongues. The national addition of bilingualism is an instructive option to multilingualism, advancing the cause of African languages as well as redistributing the language mode more equitably.

My research shows that certain other inheritances from the past have to be confronted: firstly, African languages are offered as first or third languages, but not as second languages, as English and Afrikaans are, while English and Afrikaans as both first and second and African languages as third languages are offered on two grades, standard and higher. Secondly, African languages have only been offered in the higher grade. Now there are some discrepancies here which need to be looked at quite closely when one is putting new policy into practice. Further, the present difference in language syllabuses is enormous. African languages have been colonised effectively by the Dokian approach to language analysis; people learn what should be an enabling form of communication as if it were a foreign language. While considerable attention has been devoted to innovations in English first and second language teaching, this has not been the case for African languages. For example, a matric qualification in an African language, as either first or third language, is generally something quite different from a matric qualification in Afrikaans and English.

An interim core syllabus at national level has been developed for English, but nothing equivalent is available for African languages. Interim committees were set up for each of the languages, but it is doubtful whether all language syllabuses could, at an interim phase, be informed by general principles of language syllabus. Given this delay, some provinces went ahead without adequate consultation. The Western Cape developed a

Xhosa second language syllabus and put it into practice, despite being told (I believe) that was not the proper thing to do. It is essential to provide and encourage coordination with language teachers as equal partners in order to facilitate the admirable ideas of multilingualism.

We should also bear in mind a simple point about syllabuses. My experience of language planning and in the Eastern Cape is that they often do not reach teachers. We have the experience of the new core English syllabus not reaching teachers at all. Again, some teachers have access to syllabuses, but they cannot implement them because of constraints, such as a lack of resources. There is also the well-known problem with negative wash-back, that teachers teach for the examination in the final years. With all the talk about rewriting syllabuses, these are serious issues to be addressed. Instead, the focus seems to be on other issues, such as dialect or variety, deviation from the standard, and so on. I would like to cite an African primary school syllabus which I read last year in a school in Grahamstown. It says that the aim of oral work should be to eliminate dialectal and unacceptable words and expressions borrowed from European and other languages, and to remove unrefined slang or uncultivated words, from pupils' language. That syllabus as far as I know is still operational in Grahamstown. Xhosa teachers of both first and second languages indicate that students studying an African language continue to be penalised for colloquial usage.

Another issue of concern is national attempts to have a number of languages chosen as subjects in schools. There seems to be a rather alluring idea in South Africa that the more languages institutionalised in the education process in one school, the greater the contribution made to national unity in the promotion of previously disadvantaged languages. This seems to me to be a purely quantitative approach and, given present constraints and resources, is clearly inadequate. We need to work on that.

Teacher education is another issue. Implementation of new language policies has repeatedly had to struggle against old methods and routines of classroom management and this is something that planners tend to neglect. Academics and policy formulators very often fail to project themselves into the reality of the working lives of teachers in this country. They seem to assume that teachers can achieve new results with little extra work and existing resources. As one teacher cynically remarked, 'no teacher does what she thinks is best, we do the best we can in the circumstances'. It is very difficult for teachers to change practices, no matter how great or small, if they do not understand what the changes or the rationale behind them are. For example, the first/second language distinction confuses many people.

The majority of language teachers are underprepared to meet the challenges of language teaching, given present language in education policy. This is especially true of African language teaching. We have people with three years of exposure to an African language at university, who then go out and teach it as a second language while hardly able to speak it themselves. Also, those teachers have to deal with a new situation in which they have mother tongue speakers in the classroom who must be accommodated within a particular syllabus.

Some very creative suggestions have been formulated for African language policy, in terms of teacher training. There is much to overcome from the past. It seems the emphasis has been on grammar and formalism and has not afforded teachers the opportunity to prepare techniques of enabling teaching that are desirable for first and second language teaching. Research figures indicate that only a quarter of the primary school teachers teaching African languages as second or third languages are qualified to do so. Other research figures indicate that only about a fifth of secondary school teachers of African languages as first languages are formally, in terms of university training, qualified to do so. Historically, a poorly qualified teacher was traditionally allocated as first language African language teacher. While there is concern over educational outcomes in terms of poor performance in English, this turns to alarm in the case of the development of African languages. In 1992, figures indicated that of school pupils in the old Cape Education Department, only eighteen percent of those who studied Xhosa as a second language were positive about their ability in Xhosa, while about ninety percent of their teachers were positive about their ability in Xhosa. A local survey of about a hundred pupils in Grahamstown found that only twenty percent were positive about their abilities in standard Xhosa. Clearly something is going wrong, which will have to be addressed.

As the diagram indicates, there has to be assessment after implementation, and a return to language and education policy to make any necessary adjustments. There is a common belief that you can change society by changing the education system, that through education you can promote a societal use and institutionalisation of African languages. There is just so much that a language in education policy can do, and no more. Scholars note, for example, that language policy is not enough. Social institutions and ideologies also have to change to accommodate linguistic reform if it is going to be effective. To change language policy on its own can be used as a tool of power to provide cosmetic changes which disguise the need for real social reform. Three possible solutions are as follows. Firstly, one needs in-service training, brief courses for all teachers on the importance of language in the education process. Secondly, an extended course for language teachers as a group is desirable. First you are a teacher of language and than you are a teacher of a specific language. Thirdly, a specialisation course for teachers of specific languages is required.

'Multilingualism as a resource' is an educational concept. However, it is not a resource simply by virtue of saying that it is, and formulating policies. We need to work towards creating multilingualism as a resource through unity. The first step towards this and towards implementing policy generally, is to look at language as a subject, and to develop skills in the languages of learning, whatever those might turn out to be. This depends on the language subject teacher's role in developing and understanding sensibilities and abilities, in cooperation with other subject teachers. In basic terms, a language of learning is predicated on the learning of language.

Language teachers have a central role in socialising students into a world view that languages must be viewed critically and comparatively and with cognisance of the possibilities of change. We have to be aware that language teachers stand at the heart of the most crucial educational, cultural and political issues of our times, something we must confront in the actual implementation of language in education policies.

Section 5: Language policy and publishing

Introduction

The publishing industry was represented at the conference by Kate McCallum from the Publishers Association of South Africa (PASA). The address she gave was supplemented by material she has published elsewhere, which has been drawn on for the purposes of this report. In a clear and incisive way, she follows through the implications of different language in education policies for the publishing industry, discusses the nature of corruption in the past and offers a solution for overcoming it. She offers a lively defence of a strong, competitive publishing industry, pointing to what she sees as the limitations of state publishing: the qualitative problems and lack of choice this means for the market. For South Africa's language learners and teachers, relief from the dead weight of the publishing industry of the past is an essential precondition for democratic conditions to prevail in the schools. Her address offers insight into the challenges that need to be faced in the transformation of language teaching and the role of language in educational publishing.

What will books look like? How will we teach? A practical look at language policies

Kate McCallum

'As soon as questions of will, reason or choice of action arise, social science is at a loss for explanation.' Noam Chomsky, television interview, March 1978, quoted in *The listener* 6 April 1978, from *The Oxford dictionary of modern quotations*

Much of educational publishing is about what we euphemistically refer to as 'creative tensions', the ability to reconcile the apparently irreconcilable being the art of publishing. Among these tensions are those between the conflicting interests of textual literacy (comprehension through editing) and of visual literacy (comprehension through design), of educational theory and the realities of educational practice, of educational principles and financial feasibility.

The conflict between rational principles and financial feasibility is also a key factor in educational policy-making, where the primary tension is between education and politics. Good educational publishing - and, I submit, good educational policy - is about recognising these conflicts and maintaining a delicate balance between opposing requirements. Unfortunately, all too often policy decisions are made in isolation by specialists in a particular field, without consideration of all aspects of their implementation and without examining their impact on the adjacent links in the knitting.

Nowhere is this more apparent than in discussions of language policy. It is of particular concern that language policy is often debated in pure linguistic or educational terms, without reference to political interests, to the ability of the broad mass of teachers to cope with demanding methodology in adverse circumstances, to the capacity of the publishing industry (and authors, editors and booksellers) to provide suitable and economically viable material, to the practical implications in terms of the financial cost to the state, the pace of curriculum reform, the necessity and cost of teacher training, and perhaps most importantly of all, to the wishes and aspirations of the teachers, students and parents who have a stake in the educational system.

Perhaps the greatest tension of all in language policy is between the need for 'social engineering' - of which South Africa has had more than its fair share in the past - to ensure the equal standing of all, and the need for a true democracy, in which informed choice and the right to diversity, even if lopsided, exists.

As a publisher who has been on the sharp end of policy in the past, I have been concerned about the tunnel vision that leads to hasty and expensive reversals of policy when the impracticality of it becomes apparent, usually half-way through the process of implementation. Typically in South Africa, publishers have been left out of the process of consultation in educational policy, despite being key players in the implementation of policy. In more recent years, there have been worrying signs of simplistic thinking about the nature of the publishing industry as a whole, and its part in the economic, cultural and educational life of the broader society.

The implementation of educational reform and the primacy of the textbook

An examination of the process of educational reform - policy-making and implementation - evokes the metaphor of knitting, rather than the more simple one of a chain. A decision to tamper with a single stitch can unravel the entire garment.

This paper assumes that textbooks will continue to play a central role in the majority of classrooms in South Africa, as they do at present, since the factors which contribute to this situation are not likely to disappear overnight. These factors are well documented: teachers' lack of confidence in their own abilities (for a variety of reasons, both internal and external), the perceived authority of print, the tyranny of the syllabus, the burden of preparation and work (which make it difficult to be creating innovative material every day for every class), the lack of facilities for reproduction of worksheets, etc., and the fact that economies of scale usually make textbooks on the whole, cheaper than self-produced material.

Furthermore, when evaluated on the basis of 'rand for impact', textbooks are the most cost-effective form of intervention in the classroom when compared to investments in the provision of physical facilities and teacher training. (The latter is the most effective and long-lasting form of intervention, but also the most expensive).

Politically, they have the additional attraction of being relatively easily and quickly 'implemented' as a form educational intervention. (Take for example the decision to provide double the number of textbooks to schools, in simple terms, an order, supply, and a cheque - all of which can be done in two months. Compare this to the length of time and the complexity of the process of building new schools, and the organisation and labour required for teacher training). To governments and to aid agencies to satisfy their respective constituencies, textbooks are visible, tangible and easily 'measurable' - desirable factors if one is evaluating or implementing short-term plans over a period of one to five years, (This is often the length of time a government has for reform before the next elections, and most aid agencies understandably will not commit themselves beyond a five-year frame for specific projects).

Underpinning all of the above is the restricting factor of cost. While in an ideal world there would be no limit on the cost of educational materials used in the classroom, in reality there have been, and are, severe constraints on the money available for expenditure on books in South African classrooms. Given the backlogs in educational expenditure, population growth and the need to draw into school through compulsory education the school-age children who are not at school, it is unlikely that the amount of money available for expenditure on education will increase: in fact, the ability to deliver on the above is entirely dependent on positive economic growth.

The low price ceilings that education departments have historically set for books used in schools have of necessity been the determining factor in the production of those books, and are one of the reasons, for the inadequacy of many textbooks. (Another major reason for poor quality is the lack of time given to publishers to produce books

for a new syllabus cycle, and the construction of a system which produces serious financial penalties for publishers do not have books available for purchase at the start of a syllabus cycle). In other words, the market - in this case, the education departments - tends to get what it demands and accepts.

Language policies translated into textbooks

Although it is assumed that textbooks will continue to play a dominant role in the classroom practice this is not to say that the writer's or educationist's intentions will necessarily be followed in classroom practice. It should be borne in mind that this paper is discussing the 'front-end' of educational theory and policy, i.e. what is intended in writing and delivering books to classrooms, but what actually happens in the classroom when the books arrive could and should be the subject of a separate paper.

Various policy options are laid out below, as they could be translated into textbook writing. The implications for writer and publisher are also outlined. The textual examples are rough ones, merely intended to illustrate the rise of languages, and should not be taken as an indication of the level of language support.

In essence, there are two main options relating to the medium of instruction: instruction in the home language, and instruction through the medium of another language. Both have variations, which are described below:

Option 1: Instruction in the home language

1.1 Instruction purely in the home language

Implications for writers and publishers

- Of all the options, this one requires the least amount of language support: it means either that books can be shorter, and therefore cheaper, or that more space can be devoted to enrichment and support activities, resulting in a book of reasonable length and price.

- A Grade 4 Science book could consist of 144 pages for 28 teaching weeks:
  Printrun of 5 000 copies = R16.95 retail price
  20 000 copies = R14.00 retail price

- Eleven editions in eleven languages would be required.

- The differing lengths of the languages would create editing design difficulties if each double-page spread is designed as a unit; if the book consists of continuous text, there would be differing extents (and therefore prices) for each book, and each book would have to be designed and laid out individually. (The origination costs would probably have to be spread across all eleven books to ensure that the same price is charged for each, since it would be politically insensitive to have books in some languages costing more than others. The same principle would probably have to be

applied when considering the printruns for each language, so that the high enrolment languages subsidise the low enrolment and therefore economically unviable languages).

- The core text, or content, could be written in one language and translated into other languages relatively mechanically, i.e. a subject specialist writes the core text, a translator translates, and an editor edits in the home language to ensure that the text is at the appropriate language level.

- Terminology, particularly that relating to classification, Science and Maths, differs from language to language. For example, there is no precise scientific equivalent of the word 'reptile' in isiZulu or siXhosa: two bilingual dictionaries in these languages define the word respectively in phrases that mean 'animal that crawls on its stomach' and 'a cold-blooded animal that lays eggs'. One alternative is to use the English word, and then to give the definition in the African language either in a 'dictionary' box or between brackets after the word (but young children do not always understand the use of brackets), i.e. to mix languages. Another alternative is not to use the terminology, but to use the phrase, i.e. the languages remain linguistically 'pure', if scientifically imprecise.

- Currently there are books in the African languages up to Grade 4 level; new books would have to be developed for all subjects above this level. The low-enrolment languages would not be commercially viable (only two of the eleven would).

Option 1.2 The additive bilingualism option

Implications for writers and publishers

- This option closely resembles Option 2.3 (the bilingual supportive-text option) and 2.4 (the bilingual integrated-text option) in reverse: syllabus content would need to be reduced to allow for language support work in the 'added' language, but the bulk of the teaching would be through the medium of the home language. This would result in a book of reasonable length and price.

- Roughly 10% - 20% of each double-page spread would need to contain the 'added language' plus language support. This would increase the extent of the book and therefore the price, or the content of the syllabus could be reduced to keep the book at the same length.

- A Grade 4 Science book could consist of 144 pages for 28 teaching weeks:
  Printrun of 5 000 copies = R16.95 retail price
  20 000 copies = R14.00 retail price

- Eleven books in eleven languages would be required, or more, depending on the choice of 'added language'.

- The 'core' text, or content, would be written in one language (if this is the target language) by a subject specialist and edited by an applied linguist to ensure the

language level was appropriate. Material for the language support section would need to be specific to each language and therefore be original writing: it would need to be written by applied linguists in the various African languages.

- No books currently exist in this model, so new books would have to be developed for all subjects at all levels.

- This model also presupposes teacher competence - particularly in language teaching - in the 'added language'.

- Teachers' guides would need to be produced to provide guidance in language teaching for subject specialists.

Option 2: Instruction is wholly or partly through the medium of another language

Option 2.1 The 'straight for English' option

Implications for writers and publishers

- Of all the options, this one requires the most language support. Either 'content' would need to be halved in order to provide adequate language support, or the length of the book would need to be doubled to ensure adequate language support. The former has major curriculum implications; the latter financial implications.

- A Grade 4 Science book could consist of 144 pages for 28 teaching weeks:
  Printrun of 5 000 copies = R16.95 retail price
  20 000 copies = R14.00 retail price

- One book in English for English-speakers would be required, i.e. for a level of greater competence, and one book in English for second-language speakers would be required, i.e. all content and language support is in English.

- There are no books currently suitable to this specific method.

Option 2.2 Bilingual parallel text option

Implications for writers and publishers

- Each book would contain a full translation of the target language, effectively doubling the extent of the book and increasing the price.

- A Grade 4 Science book providing a full translation of the same content could consist of 288 pages:
  Printrun of 5 000 copies = R26.58 retail price
  20 000 copies = R21.90 retail price

- One book in English for English speakers would be required, i.e. a level of greater competency in English, but would be half the extent and lower in price. Ten books in English plus African languages would be required, assuming that English is the target language of learning. (If the target language were another language, the permutations would obviously increase.

- The 'core' text, or content, would be written in one language and translated into other languages relatively mechanically, i.e. a subject specialist writes the core text, a translator translates, and an editor edits in the home language to ensure the text is at the appropriate language level.

- Careful attention would need to be given to writing, editing and design to ensure that equivalent pieces of text line up opposite one another, so that the translated text can be found easily. The differing lengths of the languages (sometimes up to 20% longer than English - see rough example above) would create some editing and design difficulties.

- Terminology, particularly relating to classification, Science and Maths, differs from language to language.

- Apart from one experimental book (a narrative), no books currently exist in this model, so new books would have to be developed at all subject levels.

- Teachers' guides would need to be produced.

Option 2.3 The bilingual supportive-text option

Implications for writers and publishers

- Roughly 25%-30% of each double-page spread would need to contain glosses of terminology/vocabulary in the home language and an amount of language support. This would increase the extent of the book and therefore the price, or the content of the syllabus could be reduced to keep the book at the same length.

- A Grade 4 Science book could consist of 144 pages for 28 teaching weeks:
  Printrun of 5 000 copies = R16.95 retail price
  20 000 copies = R14.00 retail price

- 1 book in English for English speakers would be required, i e. Level of greater competency in English, but would be half the extent and lower in price; 10 books in African languages would be required.

- The 'core' text, or content could be written in English (if this is the target language) by a subject specialist and edited by an applied linguist to ensure the language level was appropriate. Material for the language support section would need to be specific to each language and therefore be original writing: it would need to be written by applied linguists in various African languages.

- No books currently exist in this model, so new books would have to be developed for all subjects at all levels. Some books have experimented with multi-language glosses at the back of the book, which presupposes dictionary or indexing skills having been taught to the children.

- Teachers' guides would need to be produced.

Option 2.4: The bilingual integrated-text option (gradual transfer)

Implications for writers and publishers

- The languages are mixed, with terminology, paragraphs or increasing amounts of text appearing in the target language. All explanations and linking text would be in the home language. In this option the amount of content would remain much the same as in Option 1, but the ratio of text in the home language to text in the target language would decrease with each year of school.

- A Grade 4 Science book could consist of 144 pages for 28 teaching weeks:
  Printrun of 5 000 copies = R16.95 retail price
  20 000 copies = R14.00 retail price

- One book in English for English speakers would be required, i.e. a level of greater competency in English, but would be half the extent and lower in price. Ten books in English plus African languages would be required.

- From a writing and linguistics point of view, this is the most difficult material to write, since it would require either an applied linguist/writer with equal competence in both languages, or close collaboration between a subject specialist, an applied linguist in the home language and an applied linguist in the target language. Different decisions would need to be made in each of the languages about which terminology to translate, and which text to have in the target language.

- No books currently exist in this model, so new books would have to be developed for all subjects at all levels.

- Teachers' guides would need to be produced to provide guidance in language teaching for subject specialists.

- Since the language mix - and the choice of what is written in a particular language - is the writer's decision, this option allows little flexibility to the teacher.

The range and permutations of materials

If all the policy options for the medium of instruction listed above are used in South Africa, then the following range of permutations at a single school level, using the example of a Grade 4 Science textbook, across the eleven languages, will be as follows:

Option 1.1	(home language)	=	11 books
1.2	(additive bilingualism)	=	11 books (or more)
2.1	(straight for English)	=	1 for English speakers
		=	10 for non English speakers (African languages)
2.2	(bilingual parallel)	=	10 for non English speakers
2.3	(bilingual supportive)	=	10 for non English speakers
2.4	(bilingual integrated)	=	10 for non English speakers
	Total	=	63 editions

This assumes that there will be standard policies throughout the country on the timing of the transfer from the home language to the target language (for example, if all agree that at Grade 3 level 25% of teaching content subjects will be in the target language, at Grade 4 level 50% and so on) or on the subjects which are taught in the target language (for example, Maths and Science in the target language at Grade 3 level, History at Grade 7 level). Any variations will increase the number of permutations accordingly.

Applying this same range of editions to a minimum number of other content subjects at this level for which books are usually provided:

Mathematics
Science (or General Science)
History
Geography
Health Education

results in a total of 315 editions being available at Grade 4 level in the content subjects. Added to this should be eleven books teaching the home language and eleven books teaching another language as a second language, resulting in 337 editions at Grade 4 level alone.

Clearly this is a buyer's and supplier's nightmare, since publishers will have to find a way to indicate which edition is which, train sales staff to know the difference and offer advice accordingly, and teachers will need to know - and order correctly - the edition they wish to use.

Furthermore, as the simple costings indicate, the longer the printrun, the lower the unit cost and therefore the price of the book. Too many permutations will result in too many printruns at higher prices.

What this hypothetical situation illustrates is one of the classic 'creative tensions' in educational publishing, between the need to cater for the diversity of teaching and learning ability, the range of teaching methodology, the importance of encouraging experimentation, and ensuring quality by having a range of competitive books on the one hand, and the need to reduce the costs of education on the other.

It is at this stage that many administrators turn to thoughts of reduced choice and centralised decision-making in order to ensure low costs. While it may seem tempting

to embark on state/provincial or parastatal publishing as a means of ensuring administrative convenience and low cost to the state, in the long run this is counterproductive to the very conditions of educational quality, cultural richness, literacy and political stability that the country requires.

Firstly, the educational, linguistic, cultural and political needs of the population are too diverse to be catered for through uniformity or excessively limited choice. Furthermore, if uniformity is imposed, it not only contravenes the principle of democratic right of choice, but will also set the stage for the disadvantaging of one or more groups, with consequent political reaction.

Secondly, since educational publishing forms an estimated 75% of publishing revenue in South Africa - the income from which supports ventures in other areas of publishing - state or parastatal publishing, or any version of it, would effectively destroy 50%-75% of the publishing industry and its related industries by establishing preferential relationships with a few. For example, publishing ventures into South African literature are not profitable (unless they are prescribed for school use), but are cross-subsidised by the revenue from other profitable areas of publishing. Publishers publish literature because it is an important vehicle for the transmission of culture and ideas, and has an impact on the society in which it is generated. For the same reason, scholarly research, which is also unprofitable in publishing terms, makes an important contribution to society by disseminating knowledge, information and ideas.

It is noteworthy that the various African countries which have attempted to reduce the costs of textbooks by entering into exclusive contracts with publishers have publishing monopolies in the country, very few publishers and booksellers, a reduced range of books for the general public, and a poor level of literacy.

Monopolies are ultimately not competitive on quality or price, although initially the economies of scale which they offer appear attractive. Skills and capital would disappear and the costs of entry into the industry for new publishers would be too great at a later stage, when a diverse and flourishing industry would be required to satisfy the range of reading needs (for information, education, entertainment) generated by a book-hungry population. The range of books available would be substantially reduced if half the publishing and book selling industry disappeared, which would have a devastating effect on the future neo-literates, and ultimately on the literacy levels within the country.

Thirdly, high financial stakes go hand in hand with high levels of corruption. The pockets of corruption in the education system and in educational publishing in the past existed almost without exception in the areas where there were the highest stakes for the smallest number, i.e. where there was centralised decision-making, purchasing and supply, and a limited choice of books. But high stakes with a wide range of choice encouraged competition, which resulted in improved quality. In other words, the education departments willing to spend large amounts on books and to allow a wide range of choice tended to attract the widest range of competitive material. Inevitably, the quality in these areas was substantially better than in those where vested interests reigned.

Although the implications of the above seem depressing, one needs to look at historical practice and human nature to assess which way events are likely to evolve. In the past, there has usually been broad consensus among 80% of teachers as to the route or policy they intend following. This process of natural selection, which tends to favour the familiar, will itself reduce the number of suitable choices automatically.

The amount of choice will further be reduced by the range of material available for each of the options. For example, the shortage of applied linguists, and skilled writers and editors in all the languages, but particularly the African languages, will make it difficult to provide suitable material for all the options immediately.

Clearly, some degree of intervention will be required to ensure, for example, that the demographically smaller languages are catered for.

Provided there is adequate discussion, consultation and information on the implications of the various policy options prior to their being implemented, consensus on language policy is likely to emerge within each region - and between regions with historically close ties - with the result that the range of editions produced will be reduced to a manageable number. In marketing terms, the market would remain a fragmented market, which will continue to support a diverse and lively publishing industry.

The financial implications

As shown above, the various linguistic and curriculum policies which are adopted will have an impact on the length and therefore the price of textbooks. For example, the cost of supplying seven new books at Grade 4 level could be between R93 million and R176 million. I estimate the current value of the educational book market in South Africa at approximately R1 200 000 000 per annum, and changing the curriculum at one school level would cost approximately 7% - 15% of the total budget. (The present budget of supplying one book per child per subject per level, with books theoretically being replaced only 3-4 years does not include the purchase of dictionaries or supplementary readers, essential for language acquisition, atlases, essential for geographical skills, or other supplementary materials). Delivery on educational reform is possible only if there is the economic growth to sustain its policies on expenditure.

These sorts of financial considerations lead naturally to issues such as the affordability of reform and the pace at which it can be implemented.

Implications for the pace of curriculum reform

In considering the pace of curriculum reform, one is faced yet again with one of the 'creative tensions', this time between the interests of politics, which requires visible and rapid reform in the education system, and those of education, which requires longer lead-times for thorough and long-lasting reform of the curricula and for the production of quality materials based on those curricula.

There is not the space here to go into the details of the two models of curriculum reform, which have been documented elsewhere, but suffice it to say that there are two

options. The first is based on the present system of curriculum reform, as planned by all the education departments for the past two decades, while the second is my proposal for an alternative

Model 1 is based on the present pattern of an eight year cycle, where the syllabus for each subject is revised every eight years. (The length of the cycle was premised on the life cycle of the average textbook, which was expected to last four years, i.e. there would be two major purchases in a cycle, with top-up stock being ordered each year for increased enrolments or replacement of damaged stock.) The curriculum is subject driven, with groups of subjects being implemented in staggered fashion.

Although this model shows an eight year cycle, most of the implementation would actually have to take place over seven years (1997-2003), since this would be the shortest possible timetable for the production of the first new textbooks based on the first new syllabuses. As can be seen from the timetable, there is intense pressure at all stages.

1994 Departments re-organised, decision-makers appointed, syllabus committees established.
Syllabus revision complete by December 1994.
1995 Writing (six months), editing, design, production to page proof stage (six months)
Note: no time for trialling
1996 Submission and approval, printing (January-June);
marketing and promotion to schools (July-September);
ordering and supply (October-December)
1997 First new books based on first new syllabus used in schools in January 1997.

Model 2 assumes that curriculum planning will be more integrated than in previous model, where subjects are treated disparately, and that the curriculum will be reformed one year at a time, starting with the first year of school and working up. Since the first three years are closely integrated and usually require little in the way of textbooks, it should be possible to implement new syllabuses for this phase in one year. This would allow a ten year cycle, with more even and lower spread of expenditure.

A more realistic period for intensive reform of the curriculum has been anticipated:

1994 Re-organisation of education departments, appointment of decision-makers
Start of syllabus reform for lower primary
1995 Completion of syllabus reform by December
1996 Writing (six months) editing, design, production to page proof stage (six months)
1997 Trialling
1998 Submission and approval (January-March), corrections/alterations (April), printing (May-June), marketing to schools (July-September) ordering and supply (October -December)
1999 First new books in schools in January 1999 on the new first syllabus

The reform of the school-leaving year would, according to this model, take place by 2008.

Apart from assumptions about the timetable, which are viable, the advantages of Model 2 over Model 1 are the following:

- It permits and ensures greater integration of the curriculum, allowing language policy issues to shape the volume and pace of the 'content' curriculum; it also allows a skills-based curriculum to be developed and implemented in an integrated way.
- The new book requirements for each year are more evenly spread in terms of expenditure, without the wild fluctuations of Model 1.
- The demands that will be made on a new book submission and approval system are evened out.
- It suggests that teacher training on new curricula could be more manageable, with for example, all Grade 3 teachers being trained in a single year. (Under Model 1, teachers would have to be trained in every year when a new subject syllabus for Grade 4 was introduced).

Recommendations

It is of vital importance that policy-makers and decision-makers determine the following before embarking on a course of action:

- the allocation of resources for and within education (on facilities, teacher salaries, and materials), and
- therefore the feasible quality and quantity of reform over a pre-determined period of time.
- whether and how language policy will drive the curriculum, and
- how all this will be integrated with the aspirations and wishes of students, parents and teachers as well as the wider community in a form that is visible, immediate, practical and effective.

On a more practical level, from the view point of someone who is required to implement policy, we need to see the following steps:

1. The allocation of resources is established, and budgets set for the resources available for new curricula (and therefore new books on those curricula) and for teacher training (on the evaluation of books as well as on the curricula, but with particular emphasis on the application of the language policies).
2. The model of a ten-year syllabus cycle is adopted, aiming to reform the entire school curriculum over a period of ten years, starting with the first years of school and working up.
3. Adequate time should be allowed for thorough planning and preparation, aiming to have the first curricula ready for use in schools in 1999: this will allow
   - curriculum planners time to plan thoroughly
   - publishers time to produce and trial good material
   - time to establish a book evaluation system
   - time to provide teacher training on a new curriculum

4. In the short term, curriculum planners need to tackle the most visible and controversial section of the curriculum first - History. Either abandon the old syllabus and allow schools to use whatever books they choose, or establish a new syllabus as a matter of urgency.
5. Educationists and a new ministry of education should conduct a campaign of education aimed at parents and teachers on the implications of the various language options, with the goal of achieving an educationally sound curriculum that offers a reasonable degree of choice, but limits the options described above. It could consist of the following three options, for example:
   * home language instruction up to Years 4 or 5, followed by an agreed gradual transfer to the target language (practically, textbooks could look like the example in either Option 1 or Option 2.4 or both)
   * Bilingual supportive text from Year 1 (practically, this would look like options 2.1 and 2.3).

6. Because it will take some time before new curricula and therefore new books are available, the issue of existing approved book lists needs to be addressed. Since it is not physically feasible to set up a new evaluation body immediately to re-evaluate every book in the country at every level in every subject, in the interim all existing lists should be combined into a global list - from which schools may elect to use any book - and that either priority be given to establishing a new evaluation system (or body) to evaluate new texts which can be added to the list, or existing evaluation bodies continue to evaluate new material and add these to the global list.

Language policy, curriculum policy, the pace of educational reform, the financing of education and the political climate in which all of the above operate are too closely linked for a decision to be made on any one of these areas in isolation. It is of vital importance that they be considered holistically, and that the necessary balance of 'creative tensions' is achieved *before* policy is implemented. This offers the best chance of success in reform of the educational system -considered, balanced, well thought out and implemented change, which will benefit the larger society which it serves in the long term.

Appendix 1

Extracts from the Constitution

Constitutional Assembly

Constitution of the Republic of South Africa 1996

AS ADOPTED BY THE CONSTITUTIONAL ASSEMBLY ON 8 MAY 1996
AND AS AMENDED ON 11 OCTOBER 1996.

One *law* for One *nation*

8348-96

ISBN: 0-260-20716-7

Chapter 1

Founding Provisions

Republic of South Africa

1. The Republic of South Africa is one sovereign democratic state founded on the following values:
   (a) Human dignity, the achievement of equality and the advancement of human rights and freedoms.
   (b) Non-racialism and non-sexism.
   (c) Supremacy of the constitution and the rule of law.
   (d) Universal adult suffrage, a national common voters roll, regular elections and a multi-party system of democratic government, to ensure accountability, responsiveness and openness.

Supremacy of Constitution

2. This Constitution is the supreme law of the Republic; law or conduct inconsistent with it is invalid, and the obligations imposed by it must be fulfilled.

Citizenship

3. (1) There is a common South African citizenship.

   (2) All citizens are –
   (a) equally entitled to the rights, privileges and benefits of citizenship; and
   (b) equally subject to the duties and responsibilities of citizenship.

   (3) National legislation must provide for the acquisition, loss and restoration of citizenship.

National anthem

4. The national anthem of the Republic is determined by the President by proclamation.

National flag

5. The national flag of the Republic is black, gold, green, white, red and blue, as described and sketched in Schedule 1.

Languages

6. (1) The official languages of the Republic are Sepedi, Sesotho, Setswana, siSwati, Tshivenda, Xitsonga, Afrikaans, English, isiNdebele, isiXhosa and isiZulu.

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(2) Recognising the historically diminished use and status of the indigenous languages of our people, the state must take practical and positive measures to elevate the status and advance the use of these languages.

(3) (a) The national government and provincial governments may use any particular official languages for the purposes of government, taking into account usage, practicality, expense, regional circumstances and the balance of the needs and preferences of the population as a whole or in the province concerned; but the national government and each provincial government must use at least two official languages.

(b) Municipalities must take into account the language usage and preferences of their residents.

(4) The national government and provincial governments, by legislative and other measures, must regulate and monitor their use of official languages. Without detracting from the provisions of subsection (2), all official languages must enjoy parity of esteem and must be treated equitably.

(5) A Pan South African Language Board established by national legislation must –

(a) promote and create conditions for the development and use of –

(i) all official languages;

(ii) the Khoi, Nama and San languages; and

(iii) sign language ; and

(b) promote and ensure respect for –

(i) all languages commonly used by communities in South Africa, including German, Greek, Gujarati, Hindi, Portuguese, Tamil, Telegu and Urdu; and

(ii) Arabic, Hebrew, Sanskrit and other languages used for religious purposes in South Africa.

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Chapter 2

Bill of Rights

Rights

7. (1) This Bill of Rights is a cornerstone of democracy in South Africa. It enshrines the rights of all people in our country and affirms the democratic values of human dignity, equality and freedom.

(2) The state must respect, protect, promote and fulfil the rights in the Bill of Rights.

(3) The rights in the Bill of Rights are subject to the limitations contained or referred to in section 36, or elsewhere in the Bill.

Application

8. (1) The Bill of Rights applies to all law, and binds the legislature, the executive, the judiciary and all organs of state.

(2) A provision of the Bill of Rights binds a natural or a juristic person if, and to the extent that, it is applicable, taking into account the nature of the right and the nature of any duty imposed by the right.

(3) When applying a provision of the Bill of Rights to a natural or juristic person in terms of subsection (2), a court –

(a) in order to give effect to a right in the Bill, must apply, or if necessary develop, the common law to the extent that legislation does not give effect to that right; and

(b) may develop rules of the common law to limit the right, provided that the limitation is in accordance with section 36(1).

(4) A juristic person is entitled to the rights in the Bill of Rights to the extent required by the nature of the rights and the nature of that juristic person.

Equality

9. (1) Everyone is equal before the law and has the right to equal protection and benefit of the law.

(2) Equality includes the full and equal enjoyment of all rights and freedoms. To promote the achievement of equality, legislative and other measures designed to protect or advance persons, or categories of persons, disadvantaged by unfair discrimination may be taken.

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(3) The state may not unfairly discriminate directly or indirectly against anyone on one or more grounds, including race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language and birth.

(4) No person may unfairly discriminate directly or indirectly against anyone on one or more grounds in terms of subsection (3). National legislation must be enacted to prevent or prohibit unfair discrimination.

(5) Discrimination on one or more of the grounds listed in subsection (3) is unfair unless it is established that the discrimination is fair.

Human dignity

10. Everyone has inherent dignity and the right to have their dignity respected and protected.

Life

11. Everyone has the right to life.

Freedom and security of the person

12. (1) Everyone has the right to freedom and security of the person, which includes the right –
    (a) not to be deprived of freedom arbitrarily or without just cause;
    (b) not to be detained without trial;
    (c) to be free from all forms of violence from either public or private sources;
    (d) not to be tortured in any way; and
    (e) not to be treated or punished in a cruel, inhuman or degrading way.

    (2) Everyone has the right to bodily and psychological integrity, which includes the right –
    (a) to make decisions concerning reproduction;
    (b) to security in and control over their body; and
    (c) not to be subjected to medical or scientific experiments without their informed consent.

Slavery, servitude and forced labour

13. No one may be subjected to slavery, servitude or forced labour.

Privacy

14. Everyone has the right to privacy, which includes the right not to have –
    (a) their person or home searched;
    (b) their property searched;
    (c) their possessions seized; or
    (d) the privacy of their communications infringed.

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case, in addition to the rights a child enjoys under sections 12 and 35, the child may be detained only for the shortest appropriate period of time, and has the right to be –

(i) kept separately from detained persons over the age of 18 years; and

(ii) treated in a manner, and kept in conditions, that take account of the child's age;

(h) to have a legal practitioner assigned to the child by the state, and at state expense, in civil proceedings affecting the child, if substantial injustice would otherwise result; and

(i) not to be used directly in armed conflict, and to be protected in times of armed conflict.

(2) A child's best interests are of paramount importance in every matter concerning the child.

(3) In this section "child" means a person under the age of 18 years.

Education

29. (1) Everyone has the right –

(a) to a basic education, including adult basic education; and

(b) to further education, which the state, through reasonable measures, must make progressively available and accessible.

(2) Everyone has the right to receive education in the official language or languages of their choice in public educational institutions where that education is reasonably practicable. In order to ensure the effective access to, and implementation of, this right, the state must consider all reasonable educational alternatives, including single medium institutions, taking into account –

(a) equity;

(b) practicability; and

(c) the need to redress the results of past racially discriminatory laws and practices.

(3) Everyone has the right to establish and maintain, at their own expense, independent educational institutions that –

(a) do not discriminate on the basis of race;

(b) are registered with the state; and

(c) maintain standards that are not inferior to standards at comparable public educational institutions.

(4) Subsection (3) does not preclude state subsidies for independent educational institutions.

Language and culture

30. Everyone has the right to use the language and to participate in the cultural life of their choice, but no one exercising these rights may do so in a manner inconsistent with any provision of the Bill of Rights.

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Cultural, religious and linguistic communities

31. (1) Persons belonging to a cultural, religious or linguistic community may not be denied the right, with other members of that community –
    (a) to enjoy their culture, practise their religion and use their language; and
    (b) to form, join and maintain cultural, religious and linguistic associations and other organs of civil society.

    (2) The rights in subsection (1) may not be exercised in a manner inconsistent with any provision of the Bill of Rights.

Access to information

32. (1) Everyone has the right of access to –
    (a) any information held by the state; and
    (b) any information that is held by another person and that is required for the exercise or protection of any rights.

    (2) National legislation must be enacted to give effect to this right, and may provide for reasonable measures to alleviate the administrative and financial burden on the state.

Just administrative action

33. (1) Everyone has the right to administrative action that is lawful, reasonable and procedurally fair.

    (2) Everyone whose rights have been adversely affected by administrative action has the right to be given written reasons.

    (3) National legislation must be enacted to give effect to these rights, and must –
    (a) provide for the review of administrative action by a court or, where appropriate, an independent and impartial tribunal;
    (b) impose a duty on the state to give effect to the rights in subsections (1) and (2); and
    (c) promote an efficient administration.

Access to courts

34. Everyone has the right to have any dispute that can be resolved by the application of law decided in a fair public hearing before a court or, where appropriate, another independent and impartial tribunal or forum.

Arrested, detained and accused persons

35. (1) Everyone who is arrested for allegedly committing an offence has the right –
    (a) to remain silent;
    (b) to be informed promptly –
        (i) of the right to remain silent; and
        (ii) of the consequences of not remaining silent;
    (c) not to be compelled to make any confession or admission that

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Chapter 6

Provinces

Provinces

103. (1) The Republic has the following provinces:

(a) Eastern Cape
(b) Free State
(c) Gauteng
(d) KwaZulu-Natal
(e) Mpumalanga
(f) Northern Cape
(g) Northern Province
(h) North West
(i) Western Cape.

(2) The boundaries of the provinces are those that existed when the Constitution took effect.

Provincial Legislatures

Legislative authority of provinces

104. (1) The legislative authority of a province is vested in its provincial legislature, and confers on the provincial legislature the power –

(a) to pass a constitution for its province or to amend any constitution passed by it in terms of sections 142 and 143;
(b) to pass legislation for its province with regard to –
  (i) any matter within a functional area listed in Schedule 4;
  (ii) any matter within a functional area listed in Schedule 5;
  (iii) any matter outside those functional areas, and that is expressly assigned to the province by national legislation; and
  (iv) any matter for which a provision of the Constitution envisages the enactment of provincial legislation; and
(c) to assign any of its legislative powers to a Municipal Council in that province.

(2) The legislature of a province, by a resolution adopted with a supporting vote of at least two thirds of its members, may request Parliament to change the name of that province.

(3) A provincial legislature is bound only by the Constitution and, if it has passed a constitution for its province, also by that

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constitution, and must act in accordance with, and within the limits of, the Constitution and that provincial constitution.

(4) Provincial legislation with regard to a matter that is reasonably necessary for, or incidental to, the effective exercise of a power concerning any matter listed in Schedule 4, is for all purposes legislation with regard to a matter listed in Schedule 4.

(5) A provincial legislature may recommend to the National Assembly legislation concerning any matter outside the authority of that legislature, or in respect of which an Act of Parliament prevails over a provincial law.

Composition and election of provincial legislatures

105. (1) A provincial legislature consists of women and men elected as members in terms of an electoral system that –

(a) is prescribed by national legislation;

(b) is based on that province's segment of the national common voters roll;

(c) provides for a minimum voting age of 18 years; and

(d) results, in general, in proportional representation.

(2) A provincial legislature consists of between 30 and 80 members. The number of members, which may differ among the provinces, must be determined in terms of a formula prescribed by national legislation.

Membership

106. (1) Every citizen who is qualified to vote for the National Assembly is eligible to be a member of a provincial legislature, except –

(a) anyone who is appointed by, or is in the service of, the state and receives remuneration for that appointment or service, other than –

(i) the Premier and other members of the Executive Council of a province; and

(ii) other office-bearers whose functions are compatible with the functions of a member of a provincial legislature, and have been declared compatible with those functions by national legislation;

(b) members of the National Assembly, permanent delegates to the National Council of Provinces or members of a Municipal Council;

(c) unrehabilitated insolvents;

(d) anyone declared to be of unsound mind by a court of the Republic; or

(e) anyone who, after this section took effect, is convicted of an offence and sentenced to more than 12 months' imprisonment without the option of a fine, either in the Republic, or outside the Republic if the conduct constituting the offence would have been an offence in the Republic, but no one may be

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Chapter 9

State Institutions Supporting Constitutional Democracy

Establishment and governing principles

181. (1) The following state institutions strengthen constitutional democracy in the Republic:
   (a) The Public Protector.
   (b) The Human Rights Commission.
   (c) The Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities.
   (d) The Commission for Gender Equality.
   (e) The Auditor-General.
   (f) The Electoral Commission.

(2) These institutions are independent, and subject only to the Constitution and the law, and they must be impartial and must exercise their powers and perform their functions without fear, favour or prejudice.

(3) Other organs of state, through legislative and other measures, must assist and protect these institutions to ensure the independence, impartiality, dignity and effectiveness of these institutions.

(4) No person or organ of state may interfere with the functioning of these institutions.

(5) These institutions are accountable to the National Assembly, and must report on their activities and the performance of their functions to the Assembly at least once a year.

Public Protector

Functions of Public Protector

182. (1) The Public Protector has the power, as regulated by national legislation –
   (a) to investigate any conduct in state affairs, or in the public administration in any sphere of government, that is alleged or suspected to be improper or to result in any impropriety or prejudice;
   (b) to report on that conduct; and
   (c) to take appropriate remedial action.

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Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities

Functions of Commission

185. (1) The primary objects of the Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities are –

(a) to promote respect for the rights of cultural, religious and linguistic communities;

(b) to promote and develop peace, friendship, humanity, tolerance and national unity among cultural, religious and linguistic communities, on the basis of equality, non-discrimination and free association; and

(c) to recommend the establishment or recognition, in accordance with national legislation, of a cultural or other council or councils for a community or communities in South Africa.

(2) The Commission has the power, as regulated by national legislation, necessary to achieve its primary objects, including the power to monitor, investigate, research, educate, lobby, advise and report on issues concerning the rights of cultural, religious and linguistic communities.

(3) The Commission may report any matter which falls within its powers and functions to the Human Rights Commission for investigation.

(4) The Commission has the additional powers and functions prescribed by national legislation.

Composition of Commission

186. (1) The number of members of the Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities and their appointment and terms of office must be prescribed by national legislation.

(2) The composition of the Commission must-

(a) be broadly representative of the main cultural, religious and linguistic communities in South Africa; and

(b) broadly reflect the gender composition of South Africa.

Commission for Gender Equality

Functions of Commission for Gender Equality

187. (1) The Commission for Gender Equality must promote respect for gender equality and the protection, development and attainment of gender equality.

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Schedule 4

Functional Areas of Concurrent National and Provincial Legislative Competence

Part A

Administration of indigenous forests
Agriculture
Airports other than international and national airports
Animal control and diseases
Casinos, racing, gambling and wagering, excluding lotteries and sports pools
Consumer protection
Cultural matters
Disaster management
Education at all levels, excluding tertiary education
Environment
Health services
Housing
Indigenous law and customary law subject to Chapter 12 of the Constitution
Industrial promotion
Language policy and the regulation of official languages to the extent that the provisions of section 6 of the Constitution expressly confer upon the provincial legislature legislative competence
Media services directly controlled or provided by the provincial government, subject to section 192
Nature conservation, excluding national parks, national botanical gardens and marine resources

Police to the extent that the provisions of Chapter 11 of the Constitution confer upon the provincial legislature legislative competence
Pollution control
Population development
Property transfer fees
Provincial public enterprises in respect of the functional areas in this Schedule and Schedule 5
Public transport
Public works only in respect of the needs of provincial government departments in the discharge of their responsibilities to administer functions specifically assigned to them in terms of the Constitution or any other law

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Regional planning and development
Road traffic regulation
Soil conservation
Tourism
Trade
Traditional leadership subject to Chapter 12 of the Constitution
Urban and rural development
Vehicle licensing
Welfare services

Part B

The following local government matters to the extent set out in section 155(6)(a) and (7):

Air pollution
Building regulations
Child care facilities
Electricity and gas reticulation
Firefighting services
Local tourism
Municipal airports
Municipal planning
Municipal health services
Municipal public transport
Municipal public works only in respect of the needs of municipalities in the discharge of their responsibilities to administer functions specifically assigned to them under this Constitution or any other law
Pontoons, ferries, jetties, piers and harbours excluding the regulation of international and national shipping and matters related thereto
Stormwater management systems in built-up areas
Trading regulations
Water and sanitation services limited to potable water supply systems and domestic waste-water and sewage disposal systems

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Appendix 2

Extracts of language clauses in the provincial education legislation

There are essentially two types of language clauses in provincial Schools Acts and Bills: those with very little detail, such as the Western Cape and KwaZulu-Natal, and those with considerable detail, such as the Gauteng Act cited in Brendan Barry's paper above. Further, terminology in the legislation differs across provinces, for example, 'language of learning' as opposed to 'medium of instruction'. This speaks to the sensitivity of the legal instrument in current debates on language education. The extracts below are intended to provide comparison and contrast and to underpin the discussion in the Section 2, on the legal framework. Not all the Bills and Acts were available at the time of going to press, but at this point one may note that there is considerable variety in approach.

1. Western Cape Provincial School Draft Bill, 1997

This Bill has only one brief clause (p.32), which appears together with religious observance:

Clause 52. The language policy and the religious observance of a school shall be determined by its governing body.

2. The Free State School Education Act, 1996 is also minimal in its approach :

Medium of instruction

40) The Head of Education shall approve the medium of instruction of a state school or a centre of learning.

Language policy of state schools

41) The language policy of a state school shall be determined by a governing council of the school concerned, in consultation with the Head of Education and subject to the approval of the responsible Member.

3. The KwaZulu-Natal Schools Act similarly has only one brief clause:

'The Minister shall determine the medium of instruction at schools in the province.'

4. The Mpumalanga School Education Act (1995) adds another tier to decision-making, in the form of a district council. It is otherwise similar to the Gauteng legislation cited above on pages 18-19 above.

Section 15

1. The language of education at a public school shall be determined by the district council of the school concerned, in consultation with the Department, the governing body of the school concerned, and subject to the approval of the Member of the Executive Council.

2. The language policy of a public school shall be developed within the framework of the following principles-
   a) The education process shall aim at the development of a national democratic culture with respect for the country's diverse language communities.
   b) Within practical limits, a learner shall have the right to language choice in education.
   c) School language policy shall be designed to facilitate the maximum participation of learners in the learning process.
   d) Special measures shall be taken to enable a learner to become competent in the language of learning of his or her school, and where practicable, to enable a learner to use his or her language of choice where it differs from thelanguages of learning of his or her school.
   e) School language policies shall be co-ordinated at district level and shall take into account the availability of human and other resources.
   f) On completion of the ninth grade of education, a learner should have acquired satisfactory levels of competence in at least two official languages.
   g) Special measures shall be taken to promote the status and use of official languages which have previously been neglected or discriminated against by education authorities in the province.
   h) There shall be a duty on all public schools and on the Department to ensure that educators acquire the special skills necessary for teaching in a multilingual educational environment.

3. If, at any time, the Member of the Executive Council has reason to believe that the language policy of a public school does not comply with the principles set out in subsection (2), the Member of the Executive Council may direct that the language policy of the school shall be reformulated in accordance with subsections (1) and (2).

Section 16. Language and discrimination.

1. Language competence testing shall not be used as an admission requirement to a public school.
2. Learners shall be encouraged to make use of the range of official languages.
3. No learner at a public school or a private school which receives a subsidy in terms of section 66 shall be punished for expressing himself or herself in a language which is not a language of learning of the school concerned.

   a) Every learner at a public school or a private school in terms of section 66 shall not be penalised for expressing himself or herself in a language which is not the language of education of the school concerned.

   b) the right contemplated in paragraph **(4)(a)** may be limited in circumstances where limitation is reasonable and justifiable in an open democratic society based on freedom and equality and committed to multilingualism.

Section 17. Recognition of sign languages

1. The Member of the Executive Council may, by notice in the Provincial Gazette, recognise any sign language which is used by a significant proportion of people communicating in a sign language in the province.
2. For the purposes of any prescribed matter related to school education in the province, any sign language recognised under subsection (1) shall have the status of an official language.

5. **The Northern Province School Education Act, 1995** is very close to that of Gauteng.

Language policy for public schools

16. (1) The language policy of a public school shall be made by the governing body of the school concerned after consultation with the Department, and subject to the approval of the Member of Executive Council.

(2) The language policy of a public school shall be developed within the framework of the following principles:

a) The education process should aim at the development of a national democratic culture of respect for the country's diverse language communities.

b) Within practical limits, a learner shall have the right to language choice in education.

c) School language policy should be designed to facilitate the maximum participation of learners in the learning process.

d) Special measures should be taken to enable a learner to become competent in the languages of learning of his or her school, and where practicable, to enable a learner to use his or her language of choice where it differs from the languages of learning of his or her school.

e) School language policies should be co-ordinated at a district or circuit level and should take into account the availability of human and material resources.

f) On completion of the ninth level of education, a learner should have acquired satisfactory standards of competence in at least two of the official languages.

g) Special measures should be taken to promote the status and use of official languages which have previously been neglected or discriminated against by education authorities in the Province.

h) There shall be a duty on all public schools and on the department to ensure that educators acquire the special skills necessary for teaching in a multilingual educational environment.

(3) If, at any time, the Member of the Executive Council has reason to believe that the language policy of a public school does not comply with the principles set out in subsection (2), the Member of the Executive Council may, after consultation with the governing body of the school concerned, direct that the language policy of the school shall be reformulated in accordance with subsections (1) and (2)

Language and discrimination

17. (1) Language competence testing shall not be used as an admission requirement to a public school.

(2) Learners at public schools shall be encouraged to make use of the range of official languages.

(3) No learners at a public school or a private school which receives a subsidy in terms of section 63 shall be disciplined for expressing himself or herself in language which is not a language of the school concerned.

Recognition of sign language

18. (1) The Member of the Executive Council may by notice in the Provincial Gazette recognise any sign language which in his or her opinion is used by a significant proportion of people communicating in a sign language in the province.

(2) For the purposes of any matter related to school education in the Province, any sign language recognised under subsection (1) shall have the status of an official language.